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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 534

RIN 3206–AL88

Pay for Senior-Level and Scientific or Professional Positions

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This document amends rules for setting and adjusting pay of senior-level (SL) and scientific or professional (ST) employees. The Senior Professional Performance Act of 2008 changes pay for these employees by providing for rates of basic pay up to the rate payable for level III of the Executive Schedule (EX–III), or, if the employee is under a certified performance appraisal system, the rate payable for level II of the Executive Schedule (EX–II). Consistent with this statutory emphasis on performance-based pay, these regulations provide for agencies to set and adjust pay for SL and ST employees based on individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance appraisal system.

DATES: Effective April 4, 2014.

FOR FURTHER INFORMATION CONTACT: William Collins, 202–606–1642.

SUPPLEMENTARY INFORMATION: Section 2 of the Senior Professional Performance Act of 2008 (Pub. L. 110–372, October 8, 2008), hereafter referred to as the ''Act,'' made significant changes affecting pay of senior-level and scientific or professional employees. OPM published proposed regulations on December 23, 2011, (76 FR 80268) and solicited agency comments on the proposed implementation of these changes. We received comments from three agencies, an executive organization, and one individual. Comments are summarized below, along with any revisions that have been made in preparing the final regulation. These will be discussed according to their subject matter and affected sections of the regulation.

Definitions

An agency observed that OPM's definition of ''performance management system'' includes disciplines and activities by which an agency addresses the certification criteria in 5 CFR 430.404(a)(1) through (9) and asked what implications this has for an agency that does not pursue certification of an applicable performance appraisal system. OPM cites disciplines and activities associated with these criteria to give examples of included disciplines and activities. There is no intent to suggest these must be implemented in a way that results in certification for an agency's performance management system in order to satisfy the definition. This term is used in 5 CFR 534.510 to indicate sources and kinds of data an agency may use to document its basis for an off-cycle pay increase, but we provide that an agency may use other sources deemed useful. We see no adverse implications for an agency that chooses not to seek certification; however, we have removed a reference to certification from the definition.

We are concerned that this question may imply a view that an agency that does not seek certification need not design and implement its performance management system so as to support determining pay of covered senior professionals based upon performance. If so, we disagree. In **SUPPLEMENTARY INFORMATION** at 76 FR 80269, December 23, 2011, we explained that changes made by section 2 of the Act demonstrate congressional intent for SL and ST pay to be based upon individual performance, contributions to the agency's performance, or both, whether or not an agency's performance appraisal system is certified by OPM and OMB. An agency that does not seek certification is still obligated to design its performance management system for SL and ST employees based upon this congressional intent.

An agency recommended defining the term ''performance appraisal system'' because applicable pay ranges are determined based upon whether or not an agency's performance appraisal system is certified. We agree and have added a definition of ''performance appraisal system'' to 5 CFR 534.503. With respect to a senior professional employee, this definition includes both appraisal systems and appraisal programs as defined at 5 CFR 430.203.

An agency recommended that OPM redefine the term ''movement'' to exclude transfer of a Senior Executive Service (SES) employee to a senior professional position or revise 5 CFR 534.509 to provide that an SES employee transferring to a senior professional position may not be paid above the maximum rate of basic pay for senior professional employees at the hiring agency. We have not redefined ''movement'' or ''transfer'' because those definitions already exclude such changes in position, but we agree with the agency's concern. We find that 5 U.S.C. 5382(c) protects an SES member's pay rate above EX–III only upon the employee's transfer to an agency with an applicable maximum rate of pay prescribed under 5 U.S.C. 5382(a), which applies only to an SES position. Similarly, 5 U.S.C. 5376(b)(4) protects a senior professional's pay rate above EX–III only upon the employee's transfer to an agency with an applicable maximum rate of pay prescribed under 5 U.S.C. 5376(b)(1)(B), which applies only to a senior professional position. We therefore have added a new paragraph (h) to 5 CFR 534.509 to specify that provisions of that section do not apply upon appointment of an SES member to a senior professional position or upon appointment of a senior professional to an SES position.

The executive association recommended that OPM include Inspectors General in the definition of ''agency head'' to give them the same authority for senior professional pay actions as other agency heads, rather than allowing an agency head to delegate authority for pay actions to an Inspector General (IG). The executive association considers the latter approach confusing and duplicative of the authority granted under the Inspector General Reform Act of 2008 (Pub. L. 110–409, October 14, 2008). In **SUPPLEMENTARY INFORMATION** at 76 FR 80272, December 23, 2011, we explained that the IG Reform Act of 2008 does not provide OPM a statutory basis to identify the IG as an agency

head for purposes of 5 U.S.C. 5376, or to require an agency head to delegate authority for senior professional pay actions to an IG. We have not adopted the recommendation because the commenter has not identified a basis for it that we have not previously considered and found wanting.

Written Plan

The executive association agreed with requiring an agency to explain any system it uses to differentiate tiers for its senior professional positions, while expressing some doubt that tiers may be applied as readily to senior professional positions in most agencies as to senior executive positions. The executive association considers it especially critical that agencies provide a full explanation of the tiers' applicability to senior professional positions and that copies of any written plan related to tiers be provided to affected senior professionals. We agree with these observations. Each agency must determine whether tiers will be applied to their positions and, if so, explain in the agency's written pay procedures for senior professionals how they apply. However, 5 CFR 534.505(a)(3), as proposed, required that any system of tiers be described in an agency's written procedures, and 5 CFR 534.505(d) requires an agency to keep its written procedures up to date, make them available to senior professionals, and provide training or supplemental guidance as needed to clarify their application. We have revised 5 CFR 534.505(d) to state first the agency's obligation to make its written pay procedures available to affected senior professionals and to clarify their application as needed. This is done to avoid any possible misreading that would seem to make it necessary for senior professionals to request this information.

Centralized Review

An agency and the executive association objected to the agency-level centralized review requirement as proposed in 5 CFR 534.505(a)(5). Both argued that review of proposed senior professional ratings and pay adjustments by a panel within an agency component is sufficient and more similar to SES provisions for Performance Review Board (PRB) review of proposed SES ratings and awards. The agency considers a component-level PRB responsible for both SES and SL or ST appraisals to be a more meaningful venue and notes that the law does not require centralized review by a single panel. The executive association considers centralized review of SL and ST ratings an unnecessary alternative to the discretion provided an agency at 5 CFR 430.403(d) to include system features in its senior professional appraisal system that are the same as, or similar to, the features of its SES appraisal system, including procedures corresponding to PRB review for senior executives.

In **SUPPLEMENTARY INFORMATION** at 76 FR 80269, December 23, 2011, OPM explained its proposal to remove the 12-month restriction on senior professional pay adjustments and instead provide new rules that require the following: (1) determining SL and ST pay adjustments based upon performance, contributions to the agency's performance, or both; 2) for agencies with ten or more senior professionals, centralized review of proposed pay adjustments; and 3) approval of the highest level SL and ST pay adjustments and off-cycle pay adjustments under proposed 5 CFR 534.510 by the agency head or the designee who oversees the performance-based pay system. OPM proposed centralized review to provide for proposed ratings and pay adjustments to be considered within the larger context of ratings, pay adjustments, and pay rates for all agency senior professionals, so that an agency head and other authorized agency officials responsible for adjusting pay for senior professionals based upon individual performance, contributions to agency performance, or both, do so based upon advice that takes this larger context into account rather than relying solely upon the views, values and context of agency components. Our statement in **SUPPLEMENTARY INFORMATION** at 76 FR 80271, December 23, 2011, that an agency's use of an agency PRB within a senior professional performance appraisal system under 5 CFR 430.403(d) could meet the proposed centralized review requirement did not refer to component PRBs. The centralized review is intended to provide an agency-wide perspective and a check on proposed performance ratings and pay adjustments that would be significantly out of line. We have therefore revised 5 CFR 534.505(a)(5) to clarify that the centralized review is to provide advice from an agency-wide perspective to authorized agency officials for their consideration prior to approving pay adjustments.

An agency recommended deleting paragraphs (i) and (ii) of 5 CFR 534.505(a)(5) because the agency says it is not clear why an agency that does not seek certification should be required to consider whether proposed ratings and rates of basic pay are consistent with performance and pay differentiation criteria for certification. We disagree. We explained in **SUPPLEMENTARY INFORMATION** at 76 FR 80271, December 23, 2011, that OPM considers the Act to call for agency heads to use their discretion to set and adjust pay for senior professionals based upon performance whether or not an applicable performance appraisal system is certified. Upon consideration, however, we agree that the descriptions of performance differentiation and pay differentiation in 5 CFR 430.404(a)(8) and (9) include certain problematic elements. The description of performance differentiation within the certification context requires use of at least one summary performance level above Fully Successful, including a summary level that reflects outstanding performance, but an agency with an appraisal system that is not certified could use a summary rating pattern under 5 CFR 430.208(d) that does not meet this requirement. In the certification context, both performance and pay differentiation refer to review of ratings and pay adjustments that have been finalized rather than review of proposed ratings and pay adjustments. We are therefore revising paragraphs (i) and (ii) of 5 CFR 534.505(a)(5) to replace references to performance differentiation and pay differentiation as described in 5 CFR 430.404(a)(8) and (9) with language describing the centralized review panel's responsibility to advise on whether proposed ratings accurately reflect performance, and proposed pay adjustments and pay actions appropriately correspond to performance ratings.

The executive association recommends that OPM provide for PRBs to include senior professionals when senior professional ratings and awards are being considered and revise 5 CFR 430.310(a)(3) to provide that when a career senior professional's proposed ratings and awards are being considered in an agency that does not employ SES members, more than one-half of the PRB's members must be career senior professionals. Although we agree with the suggested career majority requirement, an agency that does not employ SES members normally would not be subject to 5 CFR 430.310(a)(3). Also, 5 CFR 430.403(d) gives agencies discretion to include system features in their senior professional appraisal systems that are the same as, or similar to, features of SES appraisal system(s), including procedures corresponding to PRB reviews, but a decision to include such a feature in a senior professional appraisal system would not alter the statutory basis of a PRB established

under 5 CFR 430.310, which pertains only to senior executives, or make a non-SES agency subject to requirements of that section.

We are therefore adding new paragraph (f) to 5 CFR 534.505 to require centralized review panels to have a majority of career appointees, including career SES and/or career or career-type senior professionals when reviewing proposed pay adjustments for a career or career-type senior professional. We are not requiring that a centralized review panel include a senior professional because career SES members normally have experience with performance appraisal, and there are enough of them to keep most agencies from having to go outside their own employee population to achieve a majority. We are adding that an agency head may include employees from outside the agency on a central review panel and revising 5 CFR 534.505(e)(3) to assure that it is not read as precluding use of Federal employees who are within a different OIG in the same agency on a review panel. We are also providing that an agency using the discretion provided at 5 CFR 430.403(d) must do so in accordance with the centralized review requirement.

The executive association recommends that OPM encourage Government corporations which are not covered by SES statutes or chapter 43 of title 5 to closely follow these regulations and use them in managing their SL employees. Although Government corporations are excluded from performance appraisal requirements of 5 U.S.C. 4301–4305, they are covered by 5 U.S.C. 5108, regarding allocation and establishment of SL positions, and 5 U.S.C. 5376, regarding compensation for SL positions. Since these regulations apply to Executive agencies, including Government corporations (5 CFR 534.503), we consider 5 CFR 534.505(a)(5) and (f) to apply to a Government corporation that obtains SL slots and establishes SL positions under 5 U.S.C. 5108 and compensates its SL employees under 5 U.S.C. 5376, if the Government corporation uses its discretion to implement a performance appraisal system for those employees despite being exempt from 5 U.S.C. 4301–4305. The exemption in 5 CFR 534.511(a) applies with respect to SL or ST positions and employees actually excluded from performance appraisal.

Delegation of Authority for Certain Pay Actions

One agency commented that permitting delegation of pay actions identified in 5 CFR 534.505(c) to the designee who performs the functions in 5 CFR 430.404(a)(6) is not sufficient to provide for delegating authority for these pay actions if the applicable performance appraisal system is not certified. We disagree. This requirement is intended to focus on the certifications described in 5 CFR 430.404(a)(6)(i), (ii) and (iii), which relate to the obligation of an agency, including an agency with a performance appraisal system that is not certified, to determine the pay of a senior professional based upon performance. However, the proposed language could be misunderstood as indicating that the official performing these certifications must be selected in accordance with the criteria in 5 CFR 430.404(a)(6). In an agency with a certified appraisal system, the designee who performs the functions in 5 CFR 430.404(a)(6) is also the one who performs the functions in 5 CFR 430.404(a)(5). In an agency with an appraisal system that is not certified, this need not be the case. Accordingly, we have revised 5 CFR 534.505(c) to authorize delegation to a designee who performs the certifications described in 5 CFR 430.404(a)(6)(i), (ii) and (iii) for all senior professionals in the agency and made corresponding adjustments in 5 CFR 534.506(c)(2), 5 CFR 534.510(a), and 5 CFR 534.510(d). An agency head who does not designate a single official to do this for all agency senior professionals is responsible for approving pay actions described in 5 CFR 534.505(c).

The agency also commented that a restriction on delegation of authority to approve pay actions falling within the top 10 percent of the applicable pay range differs substantially from SES regulations and creates confusing discrepancies about points at which higher-level approval is required depending upon whether an appraisal system is certified or not certified or whether the employee is SES or a senior professional. The agency says the 10 percent criterion is counterintuitive and is not required by statute; the agency recommends that OPM change the threshold amount in § 534.505(c)(1) to EX–III, the same as for SES pay actions under 5 CFR 534.404(g)(3).

We do not consider the top 10 percent rule to be counterintuitive. OPM finds that amendments in section 2 of the Act demonstrate Congress intends senior professional pay to be based upon performance. An agency cannot simply opt out by choosing not to seek certification. The 10 percent criterion provides a proportional rule that leaves most pay actions subject to approval by lower-level officials but requires top level scrutiny for certain pay actions, including the largest pay adjustments and those resulting in the highest rates of basic pay. For both certified and non-certified systems, the rules are the same, the pay actions affected are the same, the portion of the pay range subject to higher level scrutiny is the same, and the officials designated to provide that scrutiny are the same. Thus, the rule is consistent and related to its purpose. Accordingly, we have made no changes with respect to the 10 percent rule. If we were revising the SES pay rules at this time, we would consider imposing the same discipline for SES positions under appraisal systems that are not certified. Note that the final regulations still distinguish rates above EX–III as reserved for new senior professional appointees who meet criteria described in 5 CFR 534.506(a) and current senior professional appointees who meet criteria described in 5 CFR 534.507(b)(2) and require an agency's written plan to address criteria that will be used in setting or increasing pay at those rates.

Annual Pay Adjustment

One agency stated that, because the statute does not require an agency to communicate in writing the reasons for a decision not to adjust a senior professional's pay, this should be left to agency discretion. OPM explained in **SUPPLEMENTARY INFORMATION** at 76 FR 80271, December 23, 2011, its view that an SL or ST employee rated Fully Successful and properly positioned within the pay range should at least receive a pay increase that preserves the economic value of his or her salary. The statute also requires an agency head to adjust each rate of pay established under 5 U.S.C. 5376 annually by an amount the agency head considers appropriate. We consider written explanation appropriate to: (1) Establish pay adjustment as a normal expectation for a senior professional rated Fully Successful; (2) verify the agency's consideration when pay has not been adjusted; and (3) explain why pay was not adjusted in a specific case. Accordingly, we are retaining this requirement.

Another agency recommended deleting the requirement for an annual adjustment in 5 CFR 534.507(a). The agency said pay for senior professionals, like SES pay, should be based upon performance and should not be linked to GS increases or include a guaranteed adjustment. As written, the agency said this adds a cost-of-living adjustment to any performance increase. If done for senior professionals, it should be done for the SES also. OPM cannot delete the requirement for an agency head to adjust pay for senior professional positions annually because it is a

statutory requirement under 5 U.S.C. 5376(b)(2). Although we think a senior professional rated Fully Successful and properly positioned within the pay range should receive a pay increase that preserves the economic value of his or her salary, we do not agree with construing this as a cost-of-living adjustment supplementing performance based adjustments. Rather, we consider the amount needed to preserve the economic value of existing salary to be a good reference point for determining the appropriate performance-based pay adjustment for a senior professional rated Fully Successful. Since Congress does not provide a system-wide adjustment for senior professionals and has eliminated locality pay, this should not be treated as a cost-of-living adjustment to supplement performance-based pay.

The executive association considered proposed 5 CFR 534.507(a)(1) confusing in that it provided for a zero adjustment determined after review of a senior professional's performance to be considered a pay adjustment for purposes of that paragraph, unlike the SES regulations (5 CFR 534.404(c)(3)(ii)), under which a zero adjustment is not considered a pay adjustment. We find that the SES pay and senior professional pay contexts differ in a way that supports treating zero adjustments differently. The intent of the proposed language was to assure that a zero adjustment considered appropriate by the agency head is deemed to meet the statutory requirement to adjust senior professional pay rates annually. We are revising 5 CFR 534.507(a) by providing a new paragraph (a)(2) stating that a zero adjustment satisfies paragraph (a)(1) (i.e., the requirement to adjust a senior professional's rate of basic pay at the time of the General Schedule pay adjustment under 5 U.S.C. 5303) only if the notice required by paragraph (h) (i.e., giving the reasons for a zero adjustment) is provided. However, any pay adjustment authorized at any time other than that specified in 5 CFR 534.507(a) must meet the conditions specified in 5 CFR 534.510.

The executive association strongly agrees with requiring an agency to explain why a senior professional received a zero adjustment but sees no reason for the exception proposed at 5 CFR 534.507(h), i.e., for senior professionals paid within the top 10 percent of the pay range, no written explanation is required unless the employee is rated outstanding and there is an increase in the Executive Schedule pay range. The executive association recommends an agency be required to explain all zero adjustments. Our view that fully successful performance generally deserves a pay adjustment that helps preserve the economic value of a senior professional's salary is tempered when the individual is already highly compensated for his or her position. Such a senior professional should not expect increases, either to maintain or advance relative position within the pay range, apart from maintaining or exceeding the levels of performance that justified elevation to his or her existing pay rate. In effect, the bar is raised for these employees. The requirement for a written explanation if there is no increase in pay despite an outstanding rating is consistent with SES rules in that (1) an executive rated outstanding must be considered for a pay increase (5 CFR 534.404(b)(2)); and (2) an executive paid above EX–III must normally be rated outstanding to receive an increase under 5 CFR 534.404(b)(4) to maintain his or her relative position within the pay range. We have revised 5 CFR 534.507(h)(2)(ii) to clarify that if the Executive Schedule pay rates are increased, the written communication requirement applies to a senior professional paid within the top 10% of the pay range if he or she receives the highest available rating (except a fully successful rating) under the applicable summary level pattern, i.e., receives a level 4 rating in an appraisal program that uses summary level pattern C or G, or a level 5 rating in an appraisal program that uses summary level patterns B, E, F, or H. This is consistent with proposed 5 CFR 534.507(h)(2)(ii) and with the executive association's stated concern that the written communication requirement be broadly applied.

Pay Increase Upon a Temporary Movement

An agency recommended deletion of proposed § 534.508(d) under which an SL could receive a temporary pay increase upon movement to another SL position, because it could be subject to abuse. For example, an agency could break out seasonal or especially challenging aspects of work into multiple positions and reassign SL employees among them in such a manner as to either minimize or maximize the amount of time the SL employees are paid at a higher rate. In response to this concern we are revising § 534.508(d) by restricting its use to a circumstance justified under § 534.510 for movement to a position that has a substantially greater impact upon agency performance. It is written and intended to apply only upon movement to a different position. It does not apply upon a detail or temporary change in duties of an SL or ST employee's current position.

Miscellaneous

The executive association asked for examples of positions or employees that would be covered by the exception to certain regulatory requirements provided at 5 CFR 534.511. We principally have in view agencies that are excluded from performance appraisal requirements under 5 U.S.C. 4301 but still employ senior professionals covered by these regulations, such as a Government corporation. When such an agency has discretion to implement performance appraisal for its senior professionals despite being exempt and does so, we consider the Act to call for that agency to use the results of performance appraisal to set pay for those employees, so that the exception in 5 CFR 534.511 would not apply. In addition, 5 U.S.C. 4301 excludes certain employees from performance appraisal who could be senior professionals. For example, 5 U.S.C. 4301(2)(F) excludes Presidential appointees. Certain U.S. Marshal positions filled by Presidential appointment with Senate confirmation are senior professional positions. An agency's enabling legislation might also exclude specific positions or employees from performance appraisal that are not already excluded by 5 U.S.C. 4301.

An agency recommended that OPM establish a Governmentwide standardized performance plan and a standardized performance management system for senior professionals to streamline certification procedures before finalizing these regulations. OPM does not consider these proposals an appropriate basis to delay regulations implementing pay provisions of the Act.

An agency recommended that an SL/ST performance management system be certified for 4 years with no distinction of provisional or full certification. Section 3 of the Act provides that certification is for not more than 24 months, unless extended by the Director of OPM for up to 6 additional months. This change would therefore require new legislation.

An agency recommended that OPM establish a separate bonus pool for senior professionals and that there be no minimum bonus for a senior professional. This is beyond the scope of the current regulations. The SES bonus pool and minimum bonus are established by law. OPM provides associated regulations and guidance under 5 U.S.C. 5384(d) and 5385. The statute governing senior professional performance awards, 5 U.S.C. 4503 and

5 U.S.C. 4505a as extended by regulation at 5 CFR 451.101(e), does not define a bonus pool or establish a minimum award amount for senior professionals or specifically authorize OPM to do so.

OPM received six comments from an individual, some with multiple attachments including final decision notices on certain classification appeals relating to General Schedule positions, certain OPM publications related to classification of General Schedule positions, and several publications related to agriculture and economic issues in certain nations. We reviewed these comments but did not identify any specific comments concerning provisions of the proposed regulations that we could address.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, because they will apply only to Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

List of Subjects in 5 CFR Part 534

Government employees, Hospitals, Students, and Wages.

U.S. Office of Personnel Management

Katherine Archuleta,

Director.

For the reasons stated in the preamble, the U.S. Office of Personnel Management amends 5 CFR part 534 as follows:

PART 534—PAY UNDER OTHER SYSTEMS

■ 1. Revise the authority citation for part 534 to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5382, 5383, 5384, 5385, 5541, 5550a, sec. 1125 of the National Defense Authorization Act for FY 2004, Pub. L. 108–136, 117 Stat. 1638 (5 U.S.C. 5304, 5382, 5383, 7302; 18 U.S.C. 207); and sec. 2 of Pub. L. 110–372, 122 Stat. 4043 (5 U.S.C. 5304, 5307, 5376).

§ 534.404 [Amended]

■ 2. Amend § 534.404 by removing and reserving paragraphs (c)(3)(v) and (e)(2).

■ 3. Revise subpart E to read as follows:

Subpart E—Pay for Senior-Level and Scientific or Professional Positions

Sec.
534.501 Purpose.
534.502 Coverage.
534.503 Definitions.
534.504 Pay range.
534.505 Written procedures.
534.506 Setting a rate of basic pay upon appointment.
534.507 Annual increases in basic pay.
534.508 Reductions in a rate of basic pay.
534.509 Preservation of an established rate of basic pay.
534.510 Off-cycle pay increases.
534.511 Exemption from performance appraisal requirements.

Subpart E—Pay for Senior-Level and Scientific or Professional Positions

§ 534.501 Purpose.

This subpart provides rules for setting and adjusting rates of basic pay for senior-level (SL) and scientific or professional (ST) employees under 5 U.S.C. 5376. Section 5376, as amended by section 2 of the Senior Professional Performance Act of 2008 (Pub. L. 110–372, October 8, 2008), promotes performance-based pay by enabling an agency that attains certification of a performance appraisal system covering senior professionals to fix rates of basic pay for those employees up to the rate payable for level II of the Executive Schedule. Under 5 U.S.C. 5307(d) and subpart D of part 430 of this chapter, the Office of Personnel Management (OPM), with Office of Management and Budget (OMB) concurrence, grants certification only to a performance appraisal system that, in its design and application, makes meaningful distinctions based upon relative performance. This subpart implements the purpose of the law by providing for pay determinations for SL and ST employees to be based on individual performance, contributions to the agency's performance, or both, as determined through administration of the agency's performance management system(s) for SL and ST employees.

§ 534.502 Coverage.

(a) This subpart implements 5 U.S.C. 5376 and applies to—

(1) Senior-level (SL) positions classified above GS–15 pursuant to 5 U.S.C. 5108; and

(2) Scientific or professional (ST) positions established under 5 U.S.C. 3104.

(b) This subpart does not apply to—

(1) Senior Executive Service positions established under 5 U.S.C. 3132, unless the incumbent of the position declined to convert to the SES and, under § 317.303 of this chapter, remained at grade GS–16, 17, or 18 (now the SL pay system) or under the ST pay system;

(2) Positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, Defense Intelligence Executive Service, or Senior Cryptologic Executive Service; or

(3) Positions for which pay is fixed by administrative action and is limited to level IV of the Executive Schedule under 5 U.S.C. 5373.

§ 534.503 Definitions.

In this subpart—

Agency means—

(1) An Executive agency as defined in 5 U.S.C. 105;

(2) The Library of Congress; and

(3) Any other entity that is not part of an Executive agency, for which OPM has approved establishment of one or more scientific or professional positions under 5 U.S.C. 3104.

Authorized agency official means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

Certified means having the certification that OPM, with OMB concurrence, grants under 5 U.S.C. 5307(d) and part 430, subpart D of this chapter only to a performance appraisal system that makes, in its design and application, meaningful distinctions based on relative performance. In this subpart, the term ''certified'' refers to a performance appraisal system that has this certification, including a performance appraisal system for which certification has been reinstated after suspension under § 430.405(h) of this chapter.

Movement means a change of an SL or ST employee from one SL or ST position to a different SL or ST position without a break in service under procedures that meet applicable requirements for staffing positions in the competitive service and excepted service. As used in this subpart, the term ''movement'' applies only to an appointment, not a detail, and is used without reference to the pay consequences of an action. Unless otherwise specified, the term refers to position changes both within and between agencies.

Not certified means lacking the certification that OPM, with OMB concurrence, grants under 5 U.S.C. 5307(d) and part 430, subpart D of this chapter only to a performance appraisal system that makes, in its design and application, meaningful distinctions based on relative performance. In this subpart, the term ''not certified'' refers to a performance appraisal system that does not have this certification, or for which a previously granted certification has expired or is suspended under § 430.405(h) of this chapter.

Off-cycle pay increase means any increase in a senior professional's rate of basic pay that becomes effective on a date other than the date specified in § 534.507(a)(1).

OMB means the Office of Management and Budget.

OPM means the Office of Personnel Management.

Performance appraisal system means the policies, practices, and procedures an agency establishes under 5 U.S.C. chapter 43 and 5 CFR part 430, subpart B, or other applicable legal authority, for planning, monitoring, developing, evaluating, and rewarding employee performance. For a senior professional employee, this term refers to appraisal programs or appraisal systems as defined in § 430.203 of this chapter.

Performance management system means the framework of policies and practices that an agency uses to implement performance management, as described in § 430.102 of this chapter. As used in this subpart, the term includes, but is not limited to, those disciplines and activities by which an agency addresses the criteria identified in § 430.404(a)(1) through (9) of this chapter.

Performance rating means the written, or otherwise recorded, appraisal of performance compared to the SL or ST employee's performance standard(s) for each critical and non-critical element on which there has been an opportunity to perform for a minimum of 90 days. A performance rating may include the assignment of a summary level within a pattern as specified in § 430.208(d) of this chapter.

Rate of basic pay means the rate of pay fixed by law or administrative action for an SL or ST employee under the provisions of 5 U.S.C. 5376 and this subpart before any deductions and exclusive of additional pay of any other kind.

Rating of record means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern as specified in § 430.208(d) of this chapter that has been reviewed and approved in accordance with § 534.505(a).

Scientific or professional (ST) employee means an individual appointed to a position described in § 319.103 and authorized by OPM under § 319.202 of this chapter or otherwise established under 5 U.S.C. 3104.

Senior-level (SL) employee means an individual appointed to a position described in § 319.102 and authorized by OPM under § 319.202 of this chapter.

Senior professional means an SL or ST employee.

Transfer means any movement, as defined in this section, that is a change of a senior professional from an SL or ST position in one agency to an SL or ST position in another agency without a break in service of at least 1 full workday.

§ 534.504 Pay range.

(a) A rate of basic pay under this subpart must be—

(1) Not less than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule, and

(2) Not greater than—

(i) The rate of basic pay payable for level III of the Executive Schedule (EX–III), or

(ii) In the case of an SL or ST employee who is covered by a certified performance appraisal system or whose established rate of basic pay is preserved under § 534.509, the rate of basic pay payable for level II of the Executive Schedule (EX–II).

(b) An agency may not set or adjust the rate of basic pay for an SL or ST employee higher than the maximum in—

(1) Paragraph (a)(2)(i) of this section (i.e., EX–III) when the SL or ST employee is covered by a performance appraisal system that is not certified or when the SL or ST employee is not subject to a performance appraisal system, except as provided in § 534.509; or

(2) Paragraph (a)(2)(ii) of this section (i.e., EX–II) when the SL or ST employee is covered by a certified performance appraisal system.

§ 534.505 Written procedures.

(a) Each agency with positions subject to this subpart must establish written procedures for setting the rate of basic pay and increasing the rate of basic pay of incumbents of the positions in accordance with law and this subpart. Agencies must provide for transparency in the processes for making pay decisions, while assuring confidentiality. The agency's plan for setting and increasing rates of basic pay must reflect meaningful distinctions among SL and ST employees based on individual performance, contribution to agency performance, or both, and must include—

(1) The criteria that will be used to set and increase a senior professional's rate of basic pay to ensure that individual pay rates or pay increases, as well as their overall distribution within the senior professional pay range, reflect meaningful distinctions within a single performance level (e.g., the higher the employee's relative performance within a rating level, the higher the pay increase), between performance rating levels (e.g., the higher the rating level, the higher the pay increase), or both;

(2) The criteria that will be used to set and increase a senior professional's rate of basic pay at a rate that exceeds the rate for level III of the Executive Schedule if the applicable agency performance appraisal system has been certified under part 430, subpart D of this chapter;

(3) Any system, methods, or criteria the agency uses to establish pay ranges applicable to various SL or ST positions within the pay range that applies under § 534.504(a), consistent with the requirement that pay be determined based upon individual performance, contributions to the agency's performance, or both;

(4) The designation of the authorized agency official(s) who will have the authority to set and adjust rates of basic pay for SL and ST employees, subject to the requirements of paragraph (c) of this section; and

(5) The administrative and management controls that will be applied to assure compliance with applicable statutes, OPM regulations, the agency's written procedures established under this section, the applicable maximum rate of basic pay in § 534.504(a), and, where applicable, the certification requirements set forth in part 430, subpart D of this chapter. In an agency that employs ten or more senior professionals, these controls must include centralized review of ratings proposed under § 430.208 of this chapter and pay actions proposed under § 534.507 by a panel of individuals designated by the agency head to provide advice from an agency-wide perspective for authorized agency officials to consider before approving pay adjustments on whether—

(i) Ratings of record and performance ratings proposed for senior professionals accurately reflect their individual performance, contributions to agency performance, or both, and take into account, as appropriate, assessment of the agency's performance against program performance measures and other relevant considerations; and

(ii) Proposed pay adjustments for senior professionals conform to the requirements of § 534.507 and appropriately correspond to proposed ratings of record and performance ratings.

(b) Each agency's written procedure must provide that, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under 5 U.S.C. 5303 in the rates of basic pay under the General Schedule, the head of an agency will adjust a senior professional's rate of basic pay under the provisions of § 534.507.

(c) The following actions must be approved by the agency head or by a designee who provides the certifications described in § 430.404(a)(6)(i), (ii) and (iii) of this chapter for all senior professionals in the agency, and this approval authority may not be further delegated:

(1) Any pay-setting action under § 534.506 or any pay increase under § 534.507 that results in a rate of basic pay that is within the highest 10 percent of the applicable rate range under § 534.504. A rate of basic pay equal to or above the amount derived using the following rules is considered to be within the highest 10 percent of the applicable pay range (in 2013, $173,685 or above if the applicable system is certified, or $160,725 or above if the applicable system is not certified or performance appraisal does not apply):

(i) Subtract the minimum rate of basic pay from the maximum rate of basic pay for the applicable rate range under § 534.504 (in 2013, $179,700 − $119,554 = $60,146 if the applicable system is certified, or $165,300 − $119,554 = $45,746 if the applicable system is not certified or performance appraisal does not apply);

(ii) Multiply the amount derived in paragraph (b)(1)(i) of this section by 0.10 (in 2013, $60,146 × 0.10 = $6,015 if the applicable system is certified, or $45,746 × 0.10 = $4,575 if the applicable system is not certified or performance appraisal does not apply); and

(iii) Subtract the amount derived in paragraph (b)(1)(ii) of this section from the maximum rate of basic pay applicable under § 534.504 (in 2013, $179,700 − $6,015 = $173,685 if the applicable system is certified, or $165,300 − $4,575 = $160,725 if the applicable system is not certified or performance appraisal does not apply);

(2) Any pay increase under § 534.507 that results in a rate of basic pay more than 10 percent above the SL or ST employee's rate of basic pay as in effect on the last day of the preceding fiscal year or, if the individual was first appointed as an SL or ST employee in the agency after the last day of the preceding fiscal year, more than 10 percent above the rate of basic pay set at the time of that appointment. A rate of basic pay more than 10 percent above the applicable rate of basic pay is considered to be any rate of basic pay that exceeds the amount derived by multiplying the applicable rate of basic pay by a factor of 1.1;

(3) Any pay-setting action under § 534.506(c)(2) that results in a higher rate of basic pay than the senior professional had upon leaving the agency; and

(4) Any off-cycle pay increase under § 534.510.

(d) An agency must keep its written procedures for setting and increasing rates of basic pay up to date, make them available to affected SL and ST employees, periodically provide training or supplemental guidance to clarify how they are applied, and provide a copy to OPM upon request.

(e)(1) The head of an agency may delegate to an Inspector General the authority to set and adjust pay for senior professionals in the Office of the Inspector General, including authority for pay actions described in paragraph (c) of this section.

(2) An agency head who delegates to an Inspector General the authority to set and adjust pay for all senior professionals in the Office of the Inspector General, including all pay actions described in paragraph (c) of this section, may exclude those senior professionals from the count of agency senior professionals for the purpose of determining whether centralized review under paragraph (a)(5) of this section is required.

(3) An Inspector General to whom an agency head delegates authority to set and adjust pay for 10 or more senior professionals in the Office of the Inspector General must provide the centralized review required by paragraph (a)(5) of this section and may use Federal employees from outside the agency for that purpose or from the Inspector General community, whether or not in the same agency.

(f)(1) A panel performing centralized review under paragraphs (a)(5) or (e)(3) of this section for a senior professional who holds a career or career-conditional appointment or an appointment of equivalent tenure in the excepted service must have a majority of career appointees.

(2) For the purpose of paragraph (f)(1) of this section, a career appointee is considered to be a career SES member or a senior professional who holds a career or career-conditional appointment or an appointment of equivalent tenure in the excepted service.

(3) An agency head may include Federal employees from outside the agency on a panel performing centralized review.

(4) An agency using the discretion provided in § 430.403(d) of this chapter must do so in accordance with paragraphs (a)(5), (e) and (f) of this section, as applicable.

§ 534.506 Setting a rate of basic pay upon appointment.

(a) An authorized agency official may set the rate of basic pay of an individual who is not currently an SL or ST appointee of the agency at any rate within the applicable rate range under § 534.504(a) upon appointment to an SL or ST position in the agency, subject to the requirements of this section. In setting a new senior professional's rate of basic pay, an agency must consider the nature and quality of the individual's experience, accomplishments, and any unique skills, qualifications, or competencies the individual possesses as they relate to requirements of the senior professional position and its impact on the agency's performance. Rates of basic pay above the rate for level III of the Executive Schedule, but less than or equal to the rate for level II of the Executive Schedule, generally are reserved for those newly appointed senior professionals who possess superior leadership, scientific, professional or other competencies necessary to address key program and mission requirements, as determined by the agency through its strategic human capital planning process.

(b) Consistent with the agency's written procedures and paragraph (a) of this section, an authorized agency official may set the rate of basic pay for an SL or ST employee upon transfer from another agency at any rate of basic pay within the pay range that applies to the SL or ST position under § 534.504(a), except as provided in § 534.509(a).

(c)(1) Consistent with the agency's written procedures and paragraph (a) of this section, except as provided in paragraph (c)(2) of this section, an authorized agency official may set pay upon reappointment of a former SL or ST employee at any rate of basic pay within the pay range that applies to the SL or ST position under § 534.504(a).

(2) If a former agency SL or ST employee is reappointed within 30 days to the same position or a successor position in the same agency, the agency may not give the individual a higher rate of basic pay upon reappointment unless the agency head or a designee who provides the certifications described in § 430.404(a)(6)(i), (ii) and (iii) of this chapter for all senior professionals in the agency determines that a higher rate of basic pay is warranted.

§ 534.507 Annual increases in basic pay.

(a)(1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in

which an adjustment takes effect under 5 U.S.C. 5303 in the rates of basic pay under the General Schedule, the head of an agency must adjust a senior professional's rate of basic pay under paragraph (b) of this section by an amount he or she considers appropriate, subject to the applicable maximum rate under § 534.504(a), the agency's written procedures under § 534.505, and the provisions of this section.

(2) A determination by an authorized agency official to make a zero adjustment in pay after reviewing a senior professional's current rating of record or performance rating meets the requirement of paragraph (a)(1) of this section only if the notice required by paragraph (h) of this section is provided to the senior professional.

(3) A pay adjustment under paragraph (a)(1) or a determination under paragraph (a)(2) of this section does not restrict the authority of an agency head to increase pay at other times under § 534.510, if warranted.

(b)(1) An agency may provide a pay increase to a senior professional only upon a determination by the authorized agency official that the senior professional's performance and/or contributions to agency performance so warrant.

(2) Increases resulting in a rate of basic pay that exceeds the rate for level III of the Executive Schedule, but is less than or equal to the rate for level II of the Executive Schedule, are reserved for those senior professionals who demonstrate the highest levels of individual performance, make the greatest contributions to the agency's performance, or both, as determined by the agency through the administration of its performance management system.

(3) A pay increase must reflect the agency's judgment concerning the value of the employee's characteristic and continuing service to the agency in the SL or ST position. A single noteworthy contribution that is not characteristic of the employee's continuing performance requirements, individual performance or contributions to the agency's performance should be recognized by an appropriate award under part 451, subpart A of this chapter or other appropriate authority, rather than by a permanent increase in the rate of basic pay.

(c) An agency must document the basis for each pay increase granted under paragraph (b) by means of—

(1) A current rating of record; or

(2) A performance rating that covers a period of at least 90 days and is assigned in accordance with subpart B of part 430 of this chapter and the centralized review required by § 534.505(a)(5), but only if a rating of record is not available or does not reflect current performance.

(d) Any increase under this section that results in a rate of basic pay above the rate for level III of the Executive Schedule may not be made effective unless—

(1) The rating of record or performance rating used to justify the increase covers a period of at least 90 days of performance during which the applicable performance appraisal system has continuously been certified under 5 U.S.C. 5307(d) and part 430, subpart D of this chapter;

(2) The rating of record or performance rating used to justify the increase becomes final while the applicable performance appraisal system is certified;

(3) The rating and pay increase are reviewed and approved in accordance with § 534.505(a);

(4) The pay increase is approved in accordance with § 534.505(c), as applicable, and the agency's written procedures; and

(5) The pay increase becomes effective while the applicable performance appraisal system is certified.

(e) Upon the initial certification under 5 U.S.C. 5307(d) and part 430, subpart D of this chapter by OPM, with OMB concurrence, of an agency performance appraisal system covering SL or ST employees, OPM may waive the requirement of paragraph (d)(1) of this section. The requirement may be waived only if OPM determines that the agency has, for a period of no less than 90 days prior to certification, consistently applied the same performance appraisal system to covered SL or ST employees in a manner consistent with certification. If OPM waives this requirement, OPM will notify the agency in writing.

(f) Except as required by paragraph (g) of this section, a pay increase under this section may not be provided to an employee—

(1) Who has a current rating of record below Level 3 (Fully Successful or equivalent), as described in § 430.208 of this chapter; or

(2) Who, after receiving a rating of record at Level 3 or above, receives a more recent performance rating that rates performance in a critical element at a level below Fully Successful, as described in § 430.206(b)(8)(i) of this chapter.

(g) An SL or ST employee whose rate of basic pay would otherwise fall below the minimum rate of the SL and ST pay range under § 534.504(a)(1) must be provided a pay adjustment sufficient to maintain the minimum rate of basic pay.

(h)(1) If the rates of basic pay under the General Schedule are increased under 5 U.S.C. 5303 on the date specified in paragraph (a)(1) of this section and the agency head decides upon a zero adjustment for an SL or ST employee who has a current rating of record or applicable performance rating at Level 3 or above, as described in § 430.208 of this chapter, the agency must communicate the reasons for that decision to the employee in writing.

(2) Paragraph (h)(1) of this section does not apply to a senior professional with a rate of basic pay described in § 534.505(c)(1) unless—

(i) The rates of basic pay for the Executive Schedule are also increased on the date specified in paragraph (a)(1) of this section; and

(ii) The senior professional has a current rating of record or applicable performance rating at Level 4 in an appraisal program that uses summary level pattern C or G, or at Level 5 in an appraisal program that uses summary level pattern B, E, F, or H, as described in § 430.208 of this chapter.

(3) Paragraphs (h)(1) and (h)(2) of this section may not be construed to require a pay increase for any senior professional employee.

§ 534.508 Reductions in a rate of basic pay.

(a) Any reduction in a rate of basic pay for an SL or ST employee is subject to part 752, subpart D of this chapter except as otherwise provided in this section.

(b) If an employee is removed from an SL or ST position and placed in a General Schedule position under procedures in part 752, subpart D of this chapter or part 432 of this chapter providing for reduction in grade, or otherwise moves voluntarily or involuntarily to a General Schedule position, the employee is entitled to the minimum rate of basic pay, as defined in § 531.203 of this chapter, for the General Schedule grade unless the agency sets the employee's pay at a higher rate under—

(1) The maximum payable rate rule in § 531.221 of this chapter, if applicable;

(2) The superior qualifications and special needs pay-setting authority in § 531.212 of this chapter, if applicable; or

(3) The pay retention rules in part 536, subpart C of this chapter, if applicable.

(c) An agency may reduce an SL or ST employee's rate of basic pay, subject to part 752, subpart D of this chapter, upon movement to a different SL or ST position within the agency. If an SL or ST employee elects to accept a

reduction in pay to facilitate a reassignment and the agency documents the voluntary nature of the action, the resulting pay reduction is not subject to part 752, subpart D of this chapter.

(d) If an agency justifies an increase in an SL or ST employee's rate of basic pay under § 534.510 upon the employee's movement to another SL or ST position having a substantially greater impact on agency performance with the understanding that the employee will be reduced to his or her former rate of basic pay upon movement out of the position, and the agency documents the voluntary nature of the action, the resulting reduction to the former rate of basic pay (or to a higher rate of basic pay determined under this subpart that is within the pay range applicable to the SL or ST position under § 534.504(a)) is not subject to part 752, subpart D of this chapter.

(e) A reduction in the rate of basic pay of an SL or ST employee under § 534.506(b) upon transfer is considered voluntary upon the employee's acceptance of the appointment and is not subject to part 752, subpart D of this chapter, except that an SL or ST employee's rate of basic pay may not be reduced upon transfer under circumstances described in § 534.509(a). A reduction in the rate of basic pay of an SL or ST employee upon a transfer of function under part 351, subpart C of this chapter from another agency is subject to part 752, subpart D of this chapter unless otherwise provided by statute.

§ 534.509 Preservation of an established rate of basic pay.

(a) An SL or ST employee whose rate of basic pay is higher than the rate for level III of the Executive Schedule may not suffer a reduction in pay as a result of transfer to an SL or ST position in another agency where the maximum rate of basic pay for the applicable SL or ST rate range is equal to the rate for level III of the Executive Schedule.

(b) An SL or ST employee whose rate of basic pay is higher than the rate for level III of the Executive Schedule may not suffer a reduction in pay because his or her agency's applicable performance appraisal system certification expires or is suspended under § 430.405(h) of this chapter. See § 530.203(g) and (h) of this chapter for treatment of the aggregate pay limit when certification status changes during the calendar year.

(c) An agency may continue an SL or ST employee's rate of basic pay above the rate for level III of the Executive Schedule upon that employee's movement within the agency to an SL or ST position that is not under a certified performance appraisal system. Pay may be reduced upon the movement only as provided in § 534.508.

(d) If an agency grants a temporary pay increase under conditions described in § 534.508(d) to an SL or ST employee subject to a certified performance appraisal system who, prior to the temporary pay increase, has a rate of basic pay above the rate for level III of the Executive Schedule, the agency may return the employee to an SL or ST position that is not subject to a certified performance appraisal system when the temporary assignment ends and set the SL or ST employee's rate of basic pay at the rate in effect immediately before the temporary pay increase.

(e) When a rate of basic pay that is higher than the rate for level III of the Executive Schedule is preserved under a provision of this section, the SL or ST employee will continue to receive his or her current rate of basic pay and is not eligible for a pay increase until he or she is assigned to an SL or ST position covered by a certified performance appraisal system or his or her rate of basic pay is less than the rate for level III of the Executive Schedule.

(f) An agency that is otherwise subject to the limitation in § 534.504(a)(2)(i) with respect to an SL or ST position occupied by an SL or ST employee whose rate of basic pay is authorized to be preserved under paragraph (a), (b), (c), or (d) of this section may set that employee's rate of basic pay above EX–III only at the level required to preserve the applicable rate.

(g) Preservation of a rate of basic pay under this section does not preclude a subsequent reduction in pay as provided in § 534.508.

(h) The provisions of this section do not apply upon the appointment of a senior professional employee to a position in the Senior Executive Service or upon the appointment of a member of the Senior Executive Service to a senior professional position.

§ 534.510 Off-cycle pay increases.

(a) An authorized agency official may provide an off-cycle pay increase to a senior professional if, and only if, the agency head or a designee who provides the certifications described in § 430.404(a)(6)(i), (ii) and (iii) of this chapter for all senior professionals in the agency determines an off-cycle pay increase is warranted and approves the amount of the increase, subject to the requirements of this section and the agency's written procedures established under § 534.505. The authority to approve an off-cycle pay increase under this section may not be further delegated.

(b) Except as provided in paragraph (d) of this section, an off-cycle pay increase must be supported by factors that distinguish the level of the senior professional's performance and/or contributions to agency performance from that of his or her peers, as applicable, and from that sufficiently rewarded through the annual pay adjustment. In assessing the warrant for an off-cycle pay increase, the approving official may consider such factors as—

(1) A senior professional's exceptionally meritorious accomplishments that contribute significantly to the agency's performance;

(2) The need to offer a pay increase to reassign a senior professional to a position that has a substantially greater impact on agency performance; and

(3) The need to retain a senior professional whose contributions are critical to the agency and who is likely to leave the agency in the absence of a pay increase.

(c) Each off-cycle pay increase that is based upon such factors as are described in paragraphs (b)(1) through (3) of this section must be documented in accordance with § 534.507(b) through (e), except that the agency must also provide information to explain how each applicable factor was considered in determining the pay increase. This information may be derived from the agency's written pay procedures established under § 534.505, agency performance management system activities, or other sources the agency deems useful for this purpose.

(d) If the maximum rate of basic pay applicable to an agency's senior professionals increases during the 1 year period following the annual pay adjustment under § 534.507(a)(1) for reasons other than a change in the certification status of an applicable performance appraisal system, the agency head or a designee who provides the certifications described in § 430.404(a)(6)(i), (ii) and (iii) of this chapter for all senior professionals in the agency may consider whether, and to what extent, an additional pay increase may be warranted for a senior professional based on the same criteria used in determining his or her annual pay increase. However, if the increase in maximum rate of basic pay is due to a change in the certification status of an applicable performance appraisal system, the requirements of paragraphs (a), (b), and (c) of this section apply.

(e) An off-cycle pay increase granted under this section will be effective prospectively, not retroactively.

§ 534.511 Exemption from performance appraisal requirements.

(a) An agency responsible for setting and adjusting rates of basic pay for SL or ST employees or positions excluded from performance appraisal by or under statute is, with respect to those employees or positions, exempt from any provision of this subpart to the extent that it makes a pay determination contingent upon performance appraisal, including—

(1) Section 534.505(a)(1), (2) and (3) to the extent these paragraphs require that an agency's plan for setting and increasing rates of basic pay reflect meaningful distinctions among SL and ST employees based upon individual performance and include criteria that ensure individuals with the highest levels of individual performance, or the greatest contributions to agency performance, or both, receive the highest pay increases. The agency must still provide written procedures for setting and adjusting rates of pay for covered SL and ST employees that specify criteria that will be applied consistent with applicable law. The remaining provisions of § 534.505 apply, except for references in § 534.505(a)(5) to compliance with certification requirements and centralized review of ratings and pay actions;

(2) Section 534.507(b), (c), (d), (e), and (f). The agency must still document in writing the basis for each pay increase under § 534.507 in accordance with criteria specified in the agency's written procedures under § 534.505(a); and

(3) Section 534.510(b) and (c). The agency must still document in writing the basis for each off-cycle pay increase under § 534.510 in accordance with criteria specified in the agency's written procedures under § 534.505(a).

(b) Except as specified in paragraph (a) of this section, an agency responsible for setting and adjusting rates of basic pay for SL or ST employees excluded from performance appraisal by or under statute is subject to the requirements of this subpart with respect to those employees.

(c) The maximum rate of basic pay for an SL or ST employee or position not subject to performance appraisal is the maximum rate described in § 534.504(a)(2)(i). An agency head who uses the exemption in paragraph (a) of this section to set the rate of basic pay for SL or ST employees who are not subject to performance appraisal may not certify that those employees are covered by a performance appraisal system meeting the certification criteria established in part 430, subpart D of this chapter for purposes of authorizing rates of basic pay above the rate for level III of the Executive Schedule.

(d) Notwithstanding paragraph (c) of this section, an agency responsible for setting and adjusting rates of basic pay for SL or ST employees or positions excluded from performance appraisal by or under statute is subject to § 534.509(a) when setting a rate of basic pay for an SL or ST employee upon transfer to such a position. The agency may also apply § 534.509(c) upon movement of an SL or ST employee whose rate of basic pay was initially set under § 534.509(a) or (c) to another SL or ST position that is excluded from performance appraisal. Pay may be reduced upon the movement only as provided in § 534.508. In either case, the employee will not be eligible for a pay increase until he or she is appointed to an SL or ST position that is subject to a certified performance appraisal system or until his or her rate of basic pay is less than the rate for level III of the Executive Schedule.

[FR Doc. 2014–04765 Filed 3–4–14; 8:45 am]

BILLING CODE 6325–39–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2012–0052]

RIN 3150–AJ12

List of Approved Spent Fuel Storage Casks: HI–STORM 100 Cask System; Amendment No. 9

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of March 11, 2014, for the direct final rule that was published in the **Federal Register** on December 6, 2013, and corrected on December 26, 2013. This direct final rule amended the NRC's spent fuel storage regulations by revising the Holtec International HI–STORM 100 Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 9 to Certificate of Compliance (CoC) No. 1014.

DATES: The effective date of March 11, 2014, is confirmed for this direct final rule published on December 6, 2013, and corrected on December 26, 2013.

ADDRESSES: Please refer to Docket ID NRC–2012–0052 when contacting the NRC about the availability of information for this direct final rule. You may access publicly-available information related to this direct final rule by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0052. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *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: Naiem Tanious, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6103, email: *Naiem.Tanious@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

On December 6, 2013 (78 FR 73379), the NRC published a direct final rule amending its regulations at § 72.214 of Title 10 of the *Code of Federal Regulations* (10 CFR) by revising the Holtec International HI–STORM 100 Cask System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 9 to CoC No. 1014. Amendment No. 9 broadens the subgrade requirements for the HI–STORM 100U part of the HI–STORM 100 Cask System and updates the thermal model and methodology for the HI–TRAC transfer cask from a two-dimensional thermal-hydraulic model to a more accurate three-dimensional model. The amendment also makes editorial corrections.

On December 26, 2013 (78 FR 78165), the NRC published a document that

corrected several ADAMS accession numbers referenced in the December 6, 2013, direct final rule and delayed the effective date of the rule from February 19, 2014, to March 11, 2014. The NRC also published on December 26, 2013 (78 FR 78285), a document that corrected several ADAMS accession numbers referenced in the December 6, 2013, companion proposed rule and extended the public comment period from January 6, 2014, to January 27, 2014.

II. Public Comments on the Companion Proposed Rule

In the corrected direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on March 11, 2014.

The NRC received one comment on this amendment, which stated that, ''[f]uels with a burn-up above 45 GWd/tU cause previously unforeseen safety problems and would break existing NRC safety rules . . . unless changes are made to the way fuel elements are packaged.'' The comment raised general concerns with high burn-up spent fuel indicating that issues associated with high burn-up fuel have been ''ignored and remedial action defunded'' and that ''. . . the NRC has insufficient data to support a licensing position on high burn-up cask storage.'' The public comment is available in ADAMS under Accession No. ML14028A518.

The NRC staff reviewed this comment and concluded that this comment is not a significant adverse comment as defined in NUREG–BR–0053, Revision 6, ''United States Nuclear Regulatory Commission Regulations Handbook'' (hereinafter ''Regulations Handbook'') (ADAMS Accession No. ML052720461), as it is beyond the scope of this rulemaking. Instead, this comment raises a generic concern regarding the safety of high burn-up fuel and its storage in spent fuel storage casks, and is not specific to any issue or concern with the amendment to the cask certificate that is the subject of this rulemaking. The ability of the HI–STORM 100 Cask System to store high burn-up fuel for 20 years was authorized in a prior amendment, Amendment No. 1. The final rule approving that amendment was published in the **Federal Register** on July 15, 2002 (67 FR 46369). This current amendment, Amendment No. 9, does not change that prior authorization, nor does this comment raise any other issue specific to the amendment in question.

Moreover, even if the comment were determined to be in scope, it is not a ''significant'' comment as defined in the Regulations Handbook in that the comment does not present any new or significant information that warrants a substantive response in this notice and comment process. The general information cited by the commenter is not substantive enough to aid the NRC in understanding any impact upon the NRC's safety review, the technical specifications, or the NRC's conclusions of this particular amendment.

Furthermore, the commenter's references to presentations regarding the storage of high burn-up fuel involve ongoing efforts to study high burn-up fuel for periods well beyond 20 years. However, Amendment No. 1, the prior amendment that authorized the storage of high burn-up fuel in the HI–STORM 100 Cask System, only authorized storage for 20 years and not beyond. The current amendment in question, Amendment No. 9, is also limited in term for a period of 20 years. The staff is considering this issue in our review of storage license and certificate renewal applications. The NRC is actively working with the U.S. Department of Energy (DOE), DOE scientific laboratories, and the industry, to perform additional testing and evaluation of the integrity of high burn-up fuel when stored for periods well beyond 20 years. The NRC expects that research, including cask demonstrations, cladding failure consequence analyses, vibration testing, and fuel rod bend tests, will provide more cladding material properties data regarding the storage of high burn-up fuel for extended periods. The NRC expects to garner information in this area over the next 5 years, and will use this information to assess the ongoing storage of high burn-up fuel for extended periods well beyond 20 years.

The NRC staff has concluded that there would be no significant environmental impacts as confirmed in Section VII, ''Finding of No Significant Environmental Impact: Availability,'' of the direct final rule. This comment does not challenge that finding because, as the Environmental Assessment explained, this amendment to the rule will not result in any significant change in the types or significant revisions in the amounts of any effluent released, no significant increase in the individual or cumulative radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. This amendment continues to ensure that the Commission's regulations regarding dose rates, found in 10 CFR part 20, are maintained.

A challenge to those dose rates, or the method by which the Commission establishes those dose rates, would be most appropriately addressed as a petition for rulemaking pursuant to 10 CFR 2.802. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 28th day of February 2014.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2014–04837 Filed 3–4–14; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0125; Directorate Identifier 2013–NM–119–AD; Amendment 39–17778; AD 2014–05–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This AD requires, for certain airplanes, replacing radio altimeter transceivers with upgraded units, and, for all airplanes, replacing low range radio altimeter antennas with new antennas. This AD was prompted by operator reports of erratic low range radio altimeter (LRRA) operation while the airplane is airborne. We are issuing this AD to prevent adverse system responses and flight deck effects that could result in loss of controllability of the airplane or landing short of the runway during landing.

DATES: This AD is effective March 20, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 20, 2014.

We must receive comments on this AD by April 21, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0125; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Walter Cameron, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6460; fax: (425) 917–6590; email: *walter.cameron@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We have received operator reports of erratic low range radio altimeter (LRRA) operation while the airplane is airborne. The symptoms of erratic LRRA can include the following:

• Large differences between captain's and first officer's radio altitudes or a negative altitude in air.

• ''NO LAND 3'' or ''NO AUTOLAND'' Engine Indication and Crew Alerting System (EICAS) message.

• Autopilot disconnect, inability to engage autopilot, or flight directors bias-out-of view.

• Autothrottle disconnect, autothrottle retard, or inability to engage autothrottle into SPD (Speed) mode.

• Unexpected configuration warnings after takeoff, during approach, or during go-around

• Missing or inappropriate aural height callouts

• Unavailability of auto speedbrake via ''AUTO SPEEDBRAKE'' EICAS message.

• Nuisance or missing Ground Proximity Warning System (GPWS) warnings.

• Electronic Engine Control (EEC) indicating ground mode and engine going to ground idle.

• Inability to engage Lateral Navigation (LNAV).

Erratic LRRA operation events have been determined to possibly result from the following causes:

• Antenna alteration at the antenna level can create micro cracks on the electrical grounding connection, damage the coax cables or the coax connector center pin contact. Any one of these damages to the antenna assembly can affect the radio altimeter system functionality.

• The currently installed radio altimeter transceivers on some airplanes may not have adequate antenna monitoring capabilities for detecting antenna deterioration caused by environmental conditions or damage to the antenna during antenna alteration (which can result in breaks in the coaxial cables or damage to the coax connector).

These conditions, if not corrected, could result in adverse system responses and flight deck effects that could result in loss of controllability of the airplane or landing short of the runway during landing. We are issuing this AD to correct the unsafe condition on these products.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 777–34A0191, Revision 1, dated March 23, 2012, and Boeing Alert Service Bulletin 777–34A0192, dated December 14, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2014–0125.

FAA's Determination

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

AD Requirements

This AD requires accomplishing the actions specified in the service information identified previously.

FAA's Justification and Determination of the Effective Date

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2014–0125 and Directorate Identifier 2013–NM–119–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 0 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Transceiver Replacement	2 work-hours × $85 per hour = $170	$9,515	$9,685	$0
Antenna Replacement	7 work-hours × $85 per hour = $595	2,703	3,298	0

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–05–05 The Boeing Company: Amendment 39–17778; Docket No. FAA–2014–0125; Directorate Identifier 2013–NM–119–AD.

(a) Effective Date

This AD is effective March 20, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–34A0192, dated December 14, 2012.

(d) Subject

Joint Aircraft System Component (JASC) Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by operator reports of erratic low range radio altimeter (LRRA) operation while the airplane is airborne. We are issuing this AD to prevent adverse system responses and flight deck effects that could result in loss of controllability of the airplane or landing short of the runway during landing.

(f) Compliance

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

(g) Replacement of Radio Altimeter Transceivers

For airplanes identified in Boeing Alert Service Bulletin 777–34A0191, Revision 1, dated March 23, 2012: Within 24 months after the effective date of this AD, replace radio altimeter transceivers with upgraded units, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–34A0191, Revision 1, dated March 23, 2012.

(h) Replacement of Radio Altimeter Antennas

For all airplanes: Within 36 months after the effective date of this AD, replace low range radio altimeter transmit and receive antennas with new antennas, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–34A0192, dated December 14, 2012.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 777–34A0191, dated September 20, 2011, which is not incorporated by reference in this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Seattle ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9–ANM-Seattle-ACO–AMOC-Requests@faa.gov.*

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

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

(k) Related Information

(1) For more information about this AD, contact Walter Cameron, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6460; fax: (425) 917–6590; email: *walter.cameron@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference in this AD may be obtained at the address specified in paragraph (l)(3) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 777–34A0191, Revision 1, dated March 23, 2012.

(ii) Boeing Alert Service Bulletin 777–34A0192, dated December 14, 2012.

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

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

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

Issued in Renton, Washington, on February 7, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04548 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1226; Directorate Identifier 2012–NM–122–AD; Amendment 39–17741; AD 2014–03–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD was prompted by a report of a translating door handle jamming during opening of an aft door. This AD requires replacing the handle shaft with a new single-piece machined handle shaft on the aft entry and service doors, and requires revising the maintenance program by incorporating a new airworthiness limitation task. We are issuing this AD to prevent a migrated pin from jamming a translating door handle, which could prevent opening of the door and impede an emergency evacuation.

DATES: This AD becomes effective April 9, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 9, 2014.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2012-1226;* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC–8–400 series airplanes. The NPRM was published in the **Federal Register** on December 13, 2012 (77 FR 74126). The NPRM was prompted by a report of a translating door handle jamming during opening of an aft door. The NPRM proposed to require replacing the handle shaft with a new single-piece machined handle shaft on the aft entry and service doors, and requires revising the maintenance program by incorporating a new airworthiness limitation task. We are issuing this AD to prevent a migrated pin from jamming a translating door handle, which could prevent opening of the door and impede an emergency evacuation.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–17, dated May 24, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There was one reported case of the translating door handle jamming on opening. It was found that the pin on the existing handle shaft could migrate and cause the translating door handle to jam. A jammed translating door handle could prevent the opening of the door and impede evacuation in the event of an emergency.
>
> This [Canadian] AD mandates the installation of the single piece machined handle shaft (ModSum 4–113687) on the aft entry door and the aft service door, as well as the incorporation of the new Airworthiness Limitation (AWL) tasks introduced as a result of this ModSum.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2012-1226-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 74126, December 13, 2012) and the FAA's response to each comment.

Request for Optional Compliance Method

Horizon Air requested that the NPRM (77 FR 74126, December 13, 2012) be revised to account for handle shafts that might have been replaced with the single-piece machined handle shaft through attrition. Horizon Air stated that the illustrated parts catalog identifies the single-piece handle shaft as an acceptable replacement part number, and that operators might have used that single-piece handle shaft as a replacement but without using the steps specified in Bombardier Service Bulletin 84–52–66, Revision A, dated October 24, 2011.

We agree to revise this final rule. We have redesignated paragraph (i) of the NPRM (77 FR 74126, December 13, 2012) as paragraph (i)(1) in this final rule and added paragraph (i)(2) to provide credit for installing single-piece machined handle shafts with certain part numbers by attrition (for example, replacing the handle shaft during maintenance actions) before the effective date of this final rule. Operators can provide a maintenance record of this action to show compliance with this final rule.

Request To Clarify Compliance Time

Horizon Air requested that the FAA state how the repetitive 25,000-flight-hour interval specified in the tasks required by paragraph (h)(1) of the NPRM (77 FR 74126, December 13, 2012) should be applied. Horizon Air

asked if the 25,000-flight-hour interval applies to the flight hours accumulated by the airframe, or to the in-service time accumulated on the handle.

We agree with the commenter's request, and have revised paragraph (h)(1) of this final rule to clarify that the 25,000-flight-hour compliance time for the repetitive inspection interval must be applied to the airplane service life, not to the handle service life.

Request To Remove the Word ''New'' for the Replacement Handle

Horizon Air requested that the word ''new'' be removed from the description of the required replacement part in paragraph (g) of the NPRM (77 FR 74126, December 13, 2012). Horizon Air states that, because Bombardier Service Bulletin 84–52–66, Revision A, dated October 24, 2011, uses the word ''new'' in the instructions for the handle shaft replacement, the use of the word ''new'' in the NPRM is unnecessary.

We disagree. We describe the required actions from service information as accurately as possible and without ambiguity as to the required condition of any replacement parts. We have no information or data to determine that ''new or serviceable'' would be more appropriate than ''new,'' as specified in Bombardier Service Bulletin 84–52–66, Revision A, dated October 24, 2011. However, under the provisions of paragraph (j)(1) of this final rule, operators may request approval to use a ''serviceable'' handle if sufficient data are submitted to substantiate that the part would provide an acceptable level of safety. We have not changed this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 74126, December 13, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 74126, December 13, 2012).

Costs of Compliance

We estimate that this AD will affect 78 products of U.S. registry.

We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $10,596 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $879,528, or $11,276 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2012-1226;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2014–03–04 Bombardier, Inc.: Amendment 39–17741. Docket No. FAA–2012–1226; Directorate Identifier 2012–NM–122–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 9, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001, and 4003 through 4364 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 52; Doors.

(e) Reason

This AD was prompted by a report of a translating door handle jamming during opening of an aft door. We are issuing this AD to prevent a migrated pin from jamming a translating door handle, which could prevent opening of the door and impede an emergency evacuation.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Installation of the Single-Piece Machined Handle Shaft on the Aft Entry Door and the Aft Service Door

Within 6,000 flight hours or 36 months, whichever occurs first, after the effective date of this AD, replace the handle shaft with a new single-piece machined handle shaft on the aft entry and service doors by

incorporating Modification Summary (ModSum) 4–113687, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–52–66, Revision A, dated October 24, 2011.

(h) Revision of the Maintenance Program Schedule

(1) Within 30 days after the effective date of this AD, revise the maintenance program by incorporating the information in maintenance Tasks 521200–105 and 524100–105 of Bombardier Temporary Revision (TR) ALI–122, dated November 4, 2011, into Section 1 Certification Maintenance Requirements of the Airworthiness Limitations Items (ALI) Part 2, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. The compliance time for doing the initial inspections of the handle shafts on the aft entry and service door is within 25,000 flight hours after installation of the new handle shaft specified in paragraph (g) of this AD. The flight hours specified in the tasks must be applied to the airplane service life, not to the handle service life. Thereafter, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(2) The maintenance program revision required by paragraph (h)(1) of this AD may be done by inserting a copy of Bombardier TR ALI–122, dated November 4, 2011, into Section 1 Certification Maintenance Requirements of the Airworthiness Limitations Items (ALI) Part 2, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. When this TR has been included in general revisions of the maintenance requirements manual, the general revisions may be inserted in the maintenance requirements manual and this TR removed.

(i) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–52–66, dated July 25, 2011, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions required by paragraph (g) of this AD, if, through attrition, the handle shaft was replaced with a single-piece machined handle shaft having part number 85217916–115 or 85217916–116 before the effective date of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2012–17, dated May 24, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2012-1226-0002.*

(2) Service information identified in this AD that is not incorporated by reference may be viewed at the addresses specified in paragraphs (l)(3) and (l)(4) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 84–52–66, Revision A, dated October 24, 2011.

(ii) Bombardier Temporary Revision ALI–122, dated November 4, 2011, to Section 1 Certification Maintenance Requirements of the Airworthiness Limitations Items (ALI) Part 2, Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on January 22, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02516 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0866; Directorate Identifier 2013–NM–131–AD; Amendment 39–17743; AD 2014–03–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by reports of cracks found in the aft support fitting, the rear spar upper chord, and the rear spar web. This AD requires repetitive inspections for cracking of the aft support fitting for the main landing gear (MLG) beam, and the rear spar upper chord and rear spar web in the area of rear spar station (RSS) 224.14; and repair if necessary. We are issuing this AD to detect and correct such cracks, which could grow and result in a fuel leak and possible fire.

DATES: This AD is effective April 9, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 9, 2014.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for

and locating Docket No. FAA–2013–0866; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on October 24, 2013 (78 FR 63431). The NPRM was prompted by reports of cracks found in the aft support fitting, the rear spar upper chord, and the rear spar web. The NPRM proposed to require repetitive inspections for cracking of the aft support fitting for the MLG beam, and the rear spar upper chord and rear spar web in the area of RSS 224.14; and repair if necessary. We are issuing this AD to detect and correct such cracks, which could grow and result in a fuel leak and possible fire.

Comment

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal (78 FR 63431, October 24, 2013) and the FAA's response to that comment.

Statement Regarding Installation of Winglets

Aviation Partners Boeing stated that the installation of winglets per supplemental type certificate (STC) ST01219SE does not affect the accomplishment of the manufacturer's service instructions.

We concur. We have redesignated paragraph (c) of the NPRM (78 FR 63431, October 24, 2013) as paragraph (c)(1) in this final rule and added paragraph (c)(2) to state that installation of STC ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 63431, October 24, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 63431, October 24, 2013).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 353 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 86 work-hours × $85 per hour = $7,310 per inspection cycle.	$0	Up to $7,310 per inspection cycle	Up to $2,580,430 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–03–06 The Boeing Company: Amendment 39–17743; Docket No. FAA–2013–0866; Directorate Identifier 2013–NM–131–AD.

(a) Effective Date

This AD is effective April 9, 2014.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of cracks found in the aft support fitting for the main landing gear (MLG) beam, and the rear spar upper chord and rear spar web. We are issuing this AD to detect and correct such cracks, which could grow and result in a fuel leak and possible fire.

(f) Compliance

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

(g) Inspections: Group 1

For airplanes identified in Group 1 of Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013, except as required by paragraph (i) of this AD, do inspections and applicable corrective actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Inspections: Groups 2–7

For airplanes identified in Groups 2 through 7 of Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013, except as required by paragraph (i) of this AD, do high frequency eddy current inspections to detect cracking of the aft support fitting for the MLG beam, and the rear spar upper chord and rear spar web in the area of rear spar station 224.14, as applicable, in accordance with Option 1, 2, or 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013.

(1) If no crack is found, repeat the inspection thereafter at the time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013, as applicable. Accomplishment of the inspection of the 12 fastener holes (locations 1–12) in accordance with Option 2, Action 3; or Option 3, Action 3; as specified in note (b) of tables 2 through 5 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013; terminates only the corresponding inspections that include note (b) in the ''Repeat Interval'' column of the applicable table.

(2) If any crack is found during any inspection required by paragraph (g) or (g)(1) of this AD, repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Exception to Service Information Specifications

Where Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9–ANM-Seattle-ACO–AMOC-Requests@faa.gov.*

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

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

(k) Related Information

For more information about this AD, contact Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *nancy.marsh@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 737–57–1318, dated May 15, 2013.

(ii) Reserved.

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

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

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

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

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02521 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0702; Directorate Identifier 2012–NM–181–AD; Amendment 39–17753; AD 2014–03–15]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2008–14–

16 for certain 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and 328–300 airplanes. AD 2008–14–16 required installing warning placards on the inside of the passenger door and service doors and modifying the hinge supports and support struts of the passenger doors. This new AD continues to require the actions required by AD 2008–14–16 and also requires replacing the fasteners which were installed as part of the modification with new fasteners of the correct length, adds new airplanes, and removes one airplane. This AD was prompted by reports that certain fasteners, which were installed as part of the modification, are the wrong length. We are issuing this AD to prevent incidents of inadvertent opening and possible detachment of a passenger door in-flight, resulting in damage to airframe and systems and loss of control of the airplane.

DATES: This AD becomes effective April 9, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 9, 2014.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of August 21, 2008 (73 FR 40955, July 17, 2008).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA–2013–0702;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; email *gsc.op@328support.de;* Internet *http://www.328support.de.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW, Renton, WA 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2008–14–16, Amendment 39–15611 (73 FR 40955, July 17, 2008). AD 2008–14–16 applied to certain 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and 328–300 airplanes. The NPRM published in the **Federal Register** on August 27, 2013 (78 FR 52872). The NPRM was prompted by reports that certain fasteners, which were installed as part of the modification, are the wrong length. The NPRM proposed to continue to require installing warning placards on the inside of the passenger door and service doors and modifying the hinge supports and support struts of the passenger doors. The NPRM also proposed to require replacing the fasteners which were installed as part of the modification with new fasteners of the correct length, adds new airplanes, and removes one airplane. We are issuing this AD to prevent incidents of inadvertent opening and possible detachment of a passenger door in-flight, resulting in damage to airframe and systems and loss of control of the airplane.

The European Aviation Safety Agency (EASA), which is the aviation authority for Member States of the European Community, has issued EASA Airworthiness Directive 2012–0183R1, dated September 28, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> At least one incident occurred where, immediately after take-off, the passenger door of a Dornier 328 aeroplane completely opened. The flight crew reportedly had no cockpit indication or audible chime prior to this event. The aeroplane returned to the departure airfield and made an uneventful emergency landing. Substantial damage to the door, handrails, door hinge arms and fuselage skin were found.
>
> The subsequent investigation could not find any deficiency in the design of the main cabin door locking mechanism. In addition, no technical failure could be determined that precipitated the event. The flight data recorder showed that the door was closed and locked before take-off and opened shortly afterwards. Although final proof could not be obtained, the most likely way in which the door opened was that the door handle was inadvertently operated during the take-off run.
>
> In response to the incident, AvCraft (the TC holder at the time) developed a placard set to warn the occupants against touching the door handle, as well as a structural modification of the passenger door hinge supports described in [Dornier 328 Support Services] Service Bulletin (SB) SB–328–52–460 and SB–328J–52–213 to make certain that the door does not separate from the aeroplane when inadvertently opened during flight, allowing a safe descent and landing.
>
> EASA issued AD 2007–0199 (*http://ad.easa.europa.eu/ad/2007-0199*) to require the installation of warning placards and modification as detailed in these SB instructions.
>
> Since that [EASA] AD [2007–0199] was issued, 328 Support Services GmbH (the current type certificate holder) have determined that certain fasteners, identified by Part Number (P/N) NAS6703U1 and P/N NAS6703U2, which were installed as part of the modification, have the wrong length and must be replaced.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2007–0199, which is superseded, and requires replacement of the affected fasteners by the ones that have the correct length.
>
> This [EASA] AD has been revised to correct and clarify the actions required by paragraph (3).

This AD also adds new airplanes and removes one airplane from the applicability of this AD. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0702.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (78 FR 52872, August 27, 2013), or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 52872, August 27, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 52872, August 27, 2013).

Costs of Compliance

We estimate that this AD affects 35 airplanes of U.S. registry.

The actions that are required by AD 2008–14–16, Amendment 39–15611 (73 FR 40955, July 17, 2008), and retained in this AD take about 38 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $11,961 per product. Based on these figures, the estimated cost of the

actions that were required by AD 2008–14–16 is $15,191 per product.

We also estimate that it will take about 25 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $74,375, or $2,125 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that

authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0702;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008–14–16, Amendment 39–15611 (73 FR 40955, July 17, 2008), and adding the following new AD:

2014–03–15 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Amendment 39–17753. Docket No. FAA–2013–0702; Directorate Identifier 2012–NM–181–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 9, 2014.

(b) Affected ADs

This AD supersedes AD 2008–14–16, Amendment 39–15611 (73 FR 40955, July 17, 2008).

(c) Applicability

This AD applies to 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 328–100 airplanes, serial numbers 3005 through 3101 inclusive, 3103, 3104, 3106, 3109, 3110, 3112, 3113, 3115, 3117, and 3119.

(2) Model 328–300 airplanes, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 11, Placards and Markings; and Code 52, Doors.

(e) Reason

This AD was prompted by reports that certain fasteners, which were installed as part of a modification, are the wrong length. We are issuing this AD to prevent incidents of inadvertent opening and possible detachment of a passenger door in-flight, resulting in damage to airframe and systems and loss of control of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Retained Installation and Modification for Airplanes Identified in AD 2008–14–16, Amendment 39–15611 (73 FR 40955, July 17, 2008) With Revised Service Information

This paragraph restates the requirements of paragraph (f) of AD 2008–14–16, Amendment 39–15611 (73 FR 40955, July 17, 2008), with revised service information.

(1) For Model 328–100 airplanes, serial numbers 3005 through 3098 inclusive, 3100, 3106, 3109, 3110, 3112, 3113, 3115, 3117, and 3119; and Model 328–300 airplanes, having serial numbers 3102, 3105, 3108, 3111, 3114, 3116, 3118, and 3120 through 3224 inclusive: Within 30 days after August 21, 2008, (the effective date of AD 2008–14–16, Amendment 39–15611 (73 FR 40955, July 17, 2008)), install warning placards on the inside of the passenger door and service doors, in accordance with the Accomplishment Instructions of the service information specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD, as applicable.

(i) Dornier Service Bulletin SB–328–11–454, dated May 3, 2004 (for Model 328–100 airplanes).

(ii) Dornier Service Bulletin SB–328J–11–209, dated May 3, 2004 (for Model 328–300 airplanes).

(2) For Model 328–100 airplanes, serial numbers 3005 through 3098 inclusive, 3100, 3106, 3109, 3110, 3112, 3113, 3115, 3117, and 3119; and Model 328–300 airplanes, having serial numbers 3102, 3105, 3108, 3111, 3114, 3116, 3118, and 3120 through 3224 inclusive: Within 12 months after August 21, 2008, the effective date of AD 2008–14–16, Amendment 39–15611 (73 FR 0955, July 17, 2008), modify the hinge supports and support struts of the passenger doors, in accordance with the Accomplishment Instructions of the service information specified in paragraphs (g)(2)(i) through (g)(2)(iv) of this AD, as applicable. As of the effective date of this AD only the service information specified in paragraph (g)(2)(ii) or (g)(2)(iv) of this AD, as applicable, may be used.

(i) Dornier Service Bulletin SB–328–52–460, dated February 4, 2005 (for Model 328–100 airplanes).

(ii) 328 Support Services Service Bulletin SB–328–52–460, Revision 2, dated March 1, 2012 (for Model 328–100 airplanes).

(iii) Dornier Service Bulletin SB–328J–52–213, dated February 4, 2005, (for Model 328–300 airplanes).

(iv) 328 Support Services Service Bulletin SB–328J–52–213, Revision 1, dated August 17, 2011 (for Model 328–300 airplanes).

(h) New Installation and Modification for Newly Added Airplanes

For airplanes not identified in paragraph (g) of this AD, do the actions required by paragraphs (h)(1) and (h)(2) of this AD.

(1) Within 30 days after the effective date of this AD, install warning placards on the inside of the passenger door and service doors, in accordance with the Accomplishment Instructions of Dornier Service Bulletin SB–328–11–454, dated May 3, 2004 (for Model 328–100 airplanes); or Dornier Service Bulletin SB–328J–11–209, dated May 3, 2004 (for Model 328–300 airplanes); as applicable.

(2) Within 12 months after the effective date of this AD, modify the hinge supports and support struts of the passenger doors, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–52–460, Revision 2, dated March 1, 2012 (for Model 328–100 airplanes); or 328 Support Services Service Bulletin SB–328J–52–213, Revision 1, dated August 17, 2011 (for Model 328–300 airplanes); as applicable.

(i) New Replacement of Fasteners for All Airplanes

For airplanes on which 26 part number NAS6703U1 fasteners were installed as specified in the service information in paragraphs (g)(2)(i) and (g)(2)(iii) of this AD: Within 6 months after the effective date of this AD, replace the 20 affected part number NAS6703U1 fasteners with new fasteners having part number NAS6703U2, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–52–460, Revision 2, dated March 1, 2012 (for Model 328–100 airplanes); or 328 Support Services Service Bulletin SB–328J–52–213, Revision 1, dated August 17, 2011 (for Model 328–300 airplanes); as applicable.

Note 1 to paragraph (i) of this AD: 328 Support Services Service Bulletin SB–328–52–460, Revision 2, dated March 1, 2012, and 328 Support Services Service Bulletin SB–328J–52–213, Revision 1, dated August 17, 2011, identify 20 of 26 part number NAS6703U1 fasteners requiring to be replaced due to incorrect length.

(j) Credit for Previous Actions

This paragraph provides credit for certain actions required by paragraph (g) and (h)(2) of this AD, if those actions were performed before the effective date of this AD using 328 Support Services Service Bulletin SB–328–52–460, Revision 1, dated August 17, 2011, which is not incorporated by reference.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2012–0183R1, dated September 28, 2012, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2013-0702*.

(2) Service information identified in this AD that is not incorporated by reference in this AD may be obtained at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on April 9, 2014.

(i) 328 Support Services Service Bulletin SB–328–52–460, Revision 2, dated March 1, 2012.

(ii) 328 Support Services Service Bulletin SB–328J–52–213, Revision 1, dated August 17, 2011.

(4) The following service information was approved for IBR on August 21, 2008 (73 FR 40955, July 17, 2008).

(i) Dornier Service Bulletin SB–328–11–454, dated May 3, 2004.

(ii) Dornier Service Bulletin SB–328J–11–209, dated May 3, 2004.

(iii) Dornier Service Bulletin SB–328–52–460, dated February 4, 2005.

(iv) Dornier Service Bulletin SB–328J–52–213, dated February 4, 2005.

(5) For service information identified in this AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; email *gsc.op@328support.de;* Internet *http://www.328support.de.*

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

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

Issued in Renton, Washington, on January 31, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–02995 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0351; Directorate Identifier 2009–SW–049–AD; Amendment 39–17770; AD 2014–04–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Type Certificate Previously Held by Eurocopter France) (Airbus Helicopters)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Model AS350B, BA, B1, B2, B3, and D, and Model AS355E, F, F1, F2, and N helicopters with certain tail rotor (T/R) blades. This AD requires installing additional rivets to secure each T/R blade trailing edge tab (tab), and inspecting for evidence of debonding of the tab after the rivets are installed. This AD was prompted by reports of T/R blade tab debonding. The actions of this AD are intended to prevent loss of a T/R blade tab, which could result in excessive vibration and loss of control of the helicopter.

DATES: This AD is effective April 9, 2014.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of April 9, 2014.

ADDRESSES: For service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region,

2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the foreign authority's ADs, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On April 22, 2013, at 78 FR 23692, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Eurocopter France (now Airbus Helicopters) Model AS350B, BA, B1, B2, B3, D; and AS355E, F, F1, F2, and N helicopters with a T/R blade, part number (P/N) 355A12–0040–00, 355A–12–0040–01, 355A12–0040–02, 355A12–0040–03, 355A–12–0040–04, 355A12–0040–05, 355A–12–0040–07, 355A–12–0040–08, or 355A12–0040–14, all serial numbers (S/N); or P/N 355A12–0050–04, 355A12–0050–10, or 355A12–0050–12, with a S/N 8400 through 9224. The NPRM proposed to require installing additional rivets to secure each tab, and inspecting for evidence of debonding of the tab after the rivets are installed. The proposed requirements were intended to prevent loss of a T/R blade tab, which could result in excessive vibration and loss of control of the helicopter.

The NPRM was prompted by AD No. F–2004–178, dated November 10, 2004, issued by the Direction Generale de l'Aviation Civile (DGAC), which is the aviation authority for France, for Model AS350B, BA, BB, B1, B2, B3, and D helicopters, fitted with certain T/R blades. The DGAC also issued AD No. F–2004–176, dated November 10, 2004, for Model AS355E, F, F1, F2, and N helicopters with certain T/R blades. The DGAC advises of reports of T/R blade tab debonding, and that the loss of the tab leads to a significant increase in the aircraft's vibration level. As a result, the ADs mandate compliance with the manufacturer's service information to install additional rivets on the tabs.

Since we issued the NPRM, Eurocopter France changed its name to Airbus Helicopters. This AD reflects that change and updates the contact information to obtain service information.

Comments

After our NPRM (78 FR 23692, April 22, 2013) was published, we received comments from one commenter.

Request

American Eurocopter Corp. requested that we remove tail rotor blade P/Ns 355A12–0040–14, 355A12–0050–10, and 355A12–0050–12 from the applicability of our AD. The commenter stated that these tail rotor blades have trailing tabs that are integral with the tail rotor blade skin and not bonded on, and therefore are not susceptible to the unsafe condition identified in our AD. We agree and have made the requested change.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, the DCAG, its technical representative, has notified us of the unsafe condition described in its AD. We are issuing this AD because we evaluated all information provided by the DGAC and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed, except we have changed the applicability from Eurocopter France to Airbus Helicopters and removed tail rotor blades, P/N 355A12–0040–14, 355A12–0050–10, and 355A12–0050–12, from the Applicability section. These changes are consistent with the intent of the proposals in the NPRM (78 FR 23692, April 22, 2013) and will not increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the DGAC AD

This AD does not include the Model AS350 BB because it does not have an FAA-issued type certificate. This AD requires compliance within 100 hours time-in-service. The DGAC ADs require compliance within 100 flying hours ''without exceeding 3 months.''

Related Service Information

We reviewed Eurocopter Alert Service Bulletin (ASB) No. 64.00.05, Revision 2, dated February 15, 2007, for Model AS350B, BA, BB, B1, B2, B3, and D helicopters, and ASB No. 64.00.04, Revision 2, dated February 15, 2007, for Model AS355E, F, F1, F2, and N helicopters.

These ASBs specify, within 100 flying hours without exceeding three months, installing additional rivets on T/R blade tabs and inspecting each tab for debonding after the rivets have been installed. The DGAC classified these ASBs as mandatory and issued AD No. F–2004–176 and AD No. F–2004–178 to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD affects 654 helicopters of U.S. registry and that labor costs average $85 a work-hour. Based on these estimates, we expect the following costs:

- Installing rivets and inspecting for tab debonding takes 1 hour for a labor cost of $85. Parts cost $100 for a total cost of $185 per helicopter. The cost for the U.S. fleet totals $120,990.
- Replacing the tab with an airworthy tab, if needed, takes 4 hours for a total labor cost of $340. Parts cost $100, for a total cost of $440 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–04–11 Airbus Helicopters (Type Certificate Previously Held by Eurocopter France): Amendment 39–17770; Docket No. FAA–2013–0351; Directorate Identifier 2009–SW–049–AD.

(a) Applicability

This AD applies to Model AS350B, BA, B1, B2, B3, D; and AS355E, F, F1, F2, and N helicopters with a tail rotor (T/R) blade, part number (P/N) 355A12–0040–00, 355A–12–0040–01, 355A12–0040–02, 355A12–0040–03, 355A–12–0040–04, 355A12–0040–05, 355A–12–0040–07, 355A–12–0040–08, all serial numbers (S/N); or P/N 355A12–0050–04, with a S/N 8400 through 9224, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as T/R blade trailing edge tab (tab) debonding. This condition could result in excessive vibration of the helicopter and loss of control of the helicopter.

(c) Effective Date

This AD becomes effective April 9, 2014.

(d) Compliance

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

(e) Required Actions

Within 100 hours time-in-service, install additional rivets on the trailing edge tab of each T/R blade, according to the following procedures, referencing Figure 1 of Eurocopter Alert Service Bulletin (ASB) No. 64.00.05, Revision 2, dated February 15, 2007, or ASB No. 64.00.04, Revision 2, dated February 15, 2007, whichever is applicable to your model helicopter:

(1) Lightly sand the area to be drilled, using No. 80 then No. 220 sandpaper.

(2) Locate and drill eight 2.5 mm-diameter holes (T): 4 holes (T) 12 mm from the existing rivets (E) and on the centerline of the existing rivets (E), then 4 holes (T) 24 mm from the existing rivets (E) and on the centerline of the existing rivets (E).

(3) Deburr and clean the area around the drilled holes.

(4) Install 8 rivets (1) on tab (L). Any installation direction of the rivets is permissible (pressure face or suction face of the T/R blade).

(5) Inspect the tab for debonding.

(i) If there is no debonding, paint the area.

(ii) If there is debonding, replace the tab.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, Rotorcraft Directorate, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *gary.b.roach@faa.gov.*

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

(g) Additional Information

The subject of this AD is addressed in the Direction Generale de l'Aviation Civile (DGAC) AD No. F–2004–176 and AD No. F–2004–178, both dated November 10, 2004. You may view the DCAG ADs on the Internet at *http://www.regulations.gov* in Docket No. FAA–2013–0351.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6410, Tail rotor blades.

(i) Material Incorporated by Reference

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

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

(i) Eurocopter Alert Service Bulletin 64.00.05, Revision 2, dated February 15, 2007.

(ii) Eurocopter Alert Service Bulletin 64.00.04, Revision 2, dated February 15, 2007.

(3) For Eurocopter service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.*

(4) You may view this service information that is incorporated by reference at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

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

Issued in Fort Worth, Texas, on February 19, 2014.

Lance T. Gant,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014–04285 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0830; Directorate Identifier 2013–NM–128–AD; Amendment 39–17776; AD 2014–05–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This AD was prompted by a report of cracking in the fuselage skin underneath the satellite communication (SATCOM) antenna adapter. This AD requires repetitive inspections of the visible fuselage skin and doubler if installed, for cracking, corrosion, and any indication of contact of a certain fastener to a bonding jumper, and repair if necessary. We are issuing this AD to detect and correct cracking and corrosion in the fuselage skin, which could lead to rapid decompression and

loss of structural integrity of the airplane.

DATES: This AD is effective April 9, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 9, 2014.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0830; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Melanie Violette, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6422; fax: (425) 917–6590; email: *melanie.violette@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777 airplanes. The NPRM published in the **Federal Register** on September 26, 2013 (78 FR 59293). The NPRM was prompted by a report of cracking in the fuselage skin underneath the satellite communication (SATCOM) antenna adapter. The NPRM proposed to require repetitive inspections of the visible fuselage skin and doubler if installed, for cracking, corrosion, and any indication of contact of a certain fastener to a bonding jumper, and repair if necessary. We are issuing this AD to detect and correct cracking and corrosion in the fuselage skin, which could lead to rapid decompression and loss of structural integrity of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (78 FR 59293, September 26, 2013) and the FAA's response to each comment.

Request To Revise Paragraph (h)(1) of the NPRM (78 FR 59293, September 26, 2013) To Include Footnotes

Boeing requested that paragraph (h)(1) of the NPRM (78 FR 59293, September 26, 2013) be revised to include the footnotes to Tables 1, 5, and 9 of paragraph 1.E. ''Compliance,'' in addition to the ''Questionnaire Column,'' specified in Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013. Boeing stated that the statement, ''at the time of the original issue date of this service bulletin'' is not only used in the ''Condition Questionnaire'' column of Tables 1, 5, and 9 of paragraph 1.E. ''Compliance,'' but it is also used in the footnotes.

We agree with Boeing's request. We have revised paragraph (h)(1) of this final rule by removing the phrase ''the 'Condition Questionnaire' column in'' so that the exception applies to the entire table including the footnotes.

Request To Revise Paragraph (h)(1) of the NPRM (78 FR 59293, September 26, 2013) To Include the Compliance Time Column of Tables 2 Through 12

American Airlines (AA) requested that paragraph (h)(1) of the NPRM (78 FR 59293, September 26, 2013) be revised to include exceptions for the footnotes in Tables 1, 5, and 9, and the compliance times in Tables 2, 3, 4, 6, 7, 8, 10, 11, and 12, as specified in Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013. AA stated that paragraph (h)(1) of the NPRM creates exceptions to the service information in the ''Condition Questionnaire'' column in Tables 1, 5, and 9 of paragraph 1.E. ''Compliance'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, in that it allows a change in wording from ''. . . at the time of the original issue of this service bulletin'' to ''. . . as of the effective date of this AD.'' AA stated that this exception should be allowed for Tables 2 through 12 of paragraph 1.E. ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013.

We partially agree with AA's request. As stated previously, we have revised paragraph (h)(1) of this final rule to address the footnotes in Tables 1, 5, and 9, of paragraph 1.E. ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013. However, paragraph (h)(2) of this final rule already provides the exception for certain compliance times for Tables 2, 3, 4, 6, 7, 8, 10, 11, and 12, of paragraph 1.E. ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013. Therefore, no change is necessary to the final rule in this regard.

Request To Add a Terminating Action

FedEx requested that a terminating action be added prior to the release of the final rule. FedEx stated that Boeing should revise Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, to include a terminating action. FedEx stated that although the initial inspection can be planned during a scheduled maintenance visit, the repetitive inspections will require additional, unscheduled, and out of service time. FedEx also stated that the terminating action would alleviate any additional maintenance, scheduled or otherwise.

We disagree. We do not consider that delaying this action until after the release of new service information is warranted. We do not agree to delay this final rule while a terminating action is being developed due to the unsafe condition that exists. However, under the provisions of paragraph (i)(1) of this final rule, we will consider alternative methods of compliance if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed this final rule in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the change described previously, and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 59293, September 26, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 59293, September 26, 2013).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 120 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	Up to 36 work-hours × $85 per hour = $3,060 per inspection cycle.	$0	Up to $3,060 per inspection cycle	Up to $367,200 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–05–03 The Boeing Company: Amendment 39–17776; Docket No. FAA–2013–0830; Directorate Identifier 2013–NM–128–AD.

(a) Effective Date

This AD is effective April 9, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200, –200LR, –300, –300ER, and –777F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of cracking in the fuselage skin underneath the satellite communication (SATCOM) antenna adapter. We are issuing this AD to detect and correct cracking and corrosion in the fuselage skin, which could lead to rapid decompression and loss of structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections

(1) For Groups 1–4 airplanes, and Group 5, Configurations 3 and 4 airplanes, identified in Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013: Except as required by paragraphs (h)(1) and (h)(2) of this AD, within the applicable compliance times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, do internal detailed and surface high frequency eddy current (HFEC) inspections of the visible fuselage skin, and doubler if installed, for cracking; do external detailed and surface HFEC inspections of the visible fuselage skin, and doubler if installed, for cracking, corrosion, and any indication that shows a contact of a certain fastener to a bonding jumper; and do all applicable repairs; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, except as required by paragraph (h)(3) of this AD. Thereafter, repeat the inspections at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013. Do all applicable repairs before further flight.

(2) For Group 5, Configurations 1, 2, and 5 airplanes, identified in Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013: No action is required by this AD.

(h) Exceptions to the Service Information

(1) Tables 1, 5, and 9 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, refer to airplanes with certain conditions ''at the time of the original issue date of this service bulletin.'' For this AD, use ''as of the effective date of this AD'' instead of ''at the time of the original issue date of this service bulletin.''

(2) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) If any crack, corrosion, or indication that shows a contact of the fastener attaching the SATCOM lug adapter plate to the bonding plate is found during any inspection required by this AD, and Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

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

(j) Related Information

For more information about this AD, contact Melanie Violette, Aerospace Engineer, Airframe Branch, ANM 120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057 3356; phone: (425) 917–6422; fax: (425) 917–6590; email: *melanie.violette@faa.gov*.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 777–53A0068, dated June 12, 2013.

(ii) Reserved.

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

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

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

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

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04547 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30944; Amdt. No. 3578]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 5, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 5, 2014.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420)Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment

incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on January 31, 2014.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

■ 2. Part 97 is amended to read as follows:

By amending: 597.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; 597.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; 597.27 NDB, NDB/DME; 597.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; 597.31 RADAR SIAPs; 597.33 RNAV SIAPs; and 597.35 COPTER SIAP, Identified as follow:

Effection Upon Publication

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
2/6/2014	NY	New York	La Guardia	3/0566	12/24/13	This NOTAM, published in TL 14–04, is hereby rescinded in its entirety.
3/6/2014	OR	Sunriver	Sunriver	3/0064	01/22/14	RNAV (GPS) RWY 18, Orig-B.
3/6/2014	OR	Sunriver	Sunriver	3/0065	01/22/14	VOR/DME RWY 18, Amdt 1A.
3/6/2014	CA	Red Bluff	Red Bluff/Muni	3/0071	01/24/14	VOR RWY 33, Amdt 8.
3/6/2014	NJ	Teterboro	Teterboro	3/0555	01/22/14	VOR/DME A, Amdt 2C.
3/6/2014	KS	Stockton	Rooks County	3/0963	01/22/14	RNAV (GPS) RWY 18, Orig.
3/6/2014	KS	Stockton	Rooks County	3/0964	01/22/14	RNAV (GPS) RWY 36, Orig.
3/6/2014	AZ	Nogales	Nogales Intl	3/1229	01/22/14	NDB OR GPS C, Amdt 2A.
3/6/2014	CA	Santa Rosa	Charles M. Schulz—Sonoma County.	3/1986	01/22/14	RNAV (GPS) RWY 32, Orig.
3/6/2014	CO	Kremmling	McElroy Airfield	3/2514	01/24/14	GPS RWY 27, Orig.
3/6/2014	CA	Hanford	Hanford Nuni	3/4969	01/22/14	VOR A, Amdt 9A.
3/6/2014	KY	Springfield	Lebanon-Springfield	3/5406	01/22/14	RNAV (GPS) RWY 11, Orig.
3/6/2014	KY	Springfield	Lebanon-Springfield	3/5408	01/22/14	RNAV (GPS) RWY 29, Orig.
3/6/2014	ME	Machias	Machias Valley	3/5409	01/22/14	RNAV (GPS) RWY 36, Orig.-A.
3/6/2014	KY	Springfield	Lebanon-Springfield	3/5411	01/22/14	VOR/DME RWY 11, Amdt 4.
3/6/2014	MS	West Point	McCharen Field	3/5427	01/22/14	Takeoff Minimums and (Obstacle) DP, Amdt 1.
3/6/2014	FL	Ormond Beach	Ormond Beach Muni	3/5583	01/22/14	VOR RWY 17, Amdt 2.
3/6/2014	PA	Pittsburgh	Pittsburgh Intl	3/6089	01/22/14	RNAV (GPS) Y RWY 32, Amdt 5.
3/6/2014	IN	Auburn	DeKalb County	3/6405	01/22/14	RNAV (GPS) RWY 27, Orig-A.
3/6/2014	IN	Auburn	DeKalb County	3/6407	01/22/14	RNAV (GPS) RWY 9, Orig-A.
3/6/2014	MT	Colstrip	Colstrip	3/6585	01/24/14	GPS RWY 6, Orig-B.
3/6/2014	MT	Colstrip	Colstrip	3/6586	01/24/14	GPS RWY 24, Orig-A.
3/6/2014	CO	Denver	Rocky Mountain Metropolitan.	3/6616	01/24/14	VOR/DME RWY 29L/R, Orig-B.
3/6/2014	NV	Winnemucca	Winnemucca Muni	3/7889	01/22/14	VOR/DME RWY 14, Orig.
3/6/2014	KS	St Francis	Cheyenne County Muni.	3/8335	01/24/14	NDB OR GPS RWY 32, Amdt 1.
3/6/2014	CA	Bishop	Eastern Sierra Rgnl	3/9314	01/22/14	LDA/DME RWY 16, Orig.
3/6/2014	CA	Bishop	Eastern Sierra Rgnl	3/9315	01/22/14	VOR OR GPS A, Amdt 6.
3/6/2014	CA	Bishop	Eastern Sierra Rgnl	3/9316	01/22/14	RNAV (RNP), RWY 30, Orig-A.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
3/6/2014	WA	Seattle	Seattle-Tacoma Intl	3/9353	01/22/14	RNAV (GPS) Y RWY 34R, Amdt 2.
3/6/2014	CA	San Diego	San Diego Intl	3/9779	01/22/14	LOC RWY 27, Amdt 5.
3/6/2014	SC	Cheraw	Cheraw Muni/Lynch Bellinger Field.	4/0203	01/27/14	RNAV (GPS) RWY 26, AMDT 1.
3/6/2014	SC	Cheraw	Cheraw Muni/Lynch Bellinger Field.	4/0204	01/27/14	VOR/DME RWY 8, Amdt 3.
3/6/2014	RI	Pawtucket	North Central State	4/0213	01/24/14	VOR A, Amdt 7.
3/6/2014	RI	Pawtucket	North Central State	4/0214	01/24/14	LOC RWY 5, Amdt 7.
3/6/2014	RI	Pawtucket	North Central State	4/0215	01/24/14	VOR B, Amdt 7.
3/6/2014	IA	Carroll	Arthur N Neu	4/0236	01/24/14	RNAV (GPS) RWY 13 Amdt 1.
3/6/2014	IA	Carroll	Arthur N Neu	4/0237	01/24/14	RNAV (GPS) RWY 31 Amdt 1.
3/6/2014	ND	Devils Lake	Devils Lake Rgnl	4/0477	01/24/14	VOR RWY 31, Amdt 1.
3/6/2014	ND	Devils Lake	Devils Lake Rgnl	4/0496	01/24/14	ILS OR LOC/DME RWY 31, Amdt 3.
3/6/2014	ND	Devils Lake	Devils Lake Rgnl	4/0497	01/24/14	RNAV (GPS) RWY 31, Amdt 1.
3/6/2014	ND	Devils Lake	Devils Lake Rgnl	4/0498	01/24/14	VOR RWY 13, Amdt 1.
3/6/2014	ND	Devils Lake	Devils Lake Rgnl	4/0499	01/24/14	RNAV (GPS) RWY 3, Amdt 2.
3/6/2014	OK	Ardmore	Ardmore Muni	4/0504	01/27/14	VOR B, Amdt 1.
3/6/2014	ND	Devils Lake	Devils Lake Rgnl	4/0506	01/24/14	RNAV (GPS) RWY 13, Amdt 1.
3/6/2014	ND	Devils Lake	Devils Lake Rgnl	4/0507	01/24/14	RNAV (GPS) RWY 21, Amdt 1.
3/6/2014	ND	Devils Lake	Devils Lake Rgnl	4/0508	01/24/14	VOR RWY 3, Orig.
3/6/2014	WI	Chetek	Chetek Muni-Southworth.	4/0542	01/24/14	Takeoff Minimums and (Obstacle) DP, Orig.
3/6/2014	NM	Silver City	Grant County	4/0803	01/24/14	RNAV (GPS) RWY 8, Orig.
3/6/2014	NM	Silver City	Grant County	4/0806	01/24/14	RNAV (GPS) RWY 26, Orig-A.
3/6/2014	NM	Silver City	Grant County	4/0807	01/24/14	LOC/DME RWY 26, Amdt 5A.
3/6/2014	NM	Silver City	Grant County	4/0808	01/24/14	VOR/DME-B, Amdt 3A.
3/6/2014	NM	Silver City	Grant County	4/0809	01/24/14	VOR-A, Amdt 7A.
3/6/2014	PA	Philadelphia	Philadelphia Intl	4/1177	01/24/14	CONVERGING ILS RWY 9R, Amdt 4.
3/6/2014	PA	Philadelphia	Philadelphia Intl	4/1180	01/24/14	CONVERGING ILS RWY 17, Amdt 6.
3/6/2014	AR	Little Rock	Bill And Hillary Clinton National/Adams Field.	4/1344	01/24/14	RNAV (GPS) RWY 18, Amdt 1B.
3/6/2014	MI	Romeo	Romeo State	4/1493	01/27/14	RNAV (GPS) RWY 36, Amdt 1.
3/6/2014	TX	Mineola/Quitman	Wood County	4/1937	01/24/14	RNAV (GPS) RWY 36, Orig.
3/6/2014	TX	Mineola/Quitman	Wood County	4/1938	01/24/14	RNAV (GPS) RWY 18, Orig.
3/6/2014	TX	Mineola/Quitman	Wood County	4/1939	01/24/14	VOR/DME B, Amdt 2.
3/6/2014	NC	Whiteville	Columbus County Muni.	4/2073	01/27/14	RNAV (GPS) RWY 6, Orig.
3/6/2014	NC	Whiteville	Columbus County Muni.	4/2074	01/27/14	NDB RWY 6, Amdt 5.
3/6/2014	NC	Erwin	Harnett Rgnl Jetport	4/2075	01/27/14	VOR/DME RWY 5, Amdt 2A.
3/6/2014	FL	Lake Wales	Lake Wales Muni	4/2079	01/24/14	RNAV (GPS) RWY 6, Orig.
3/6/2014	PA	Harrisburg	Harrisburg Intl	4/2081	01/24/14	ILS OR LOC RWY 31, Amdt 1A.
3/6/2014	MN	Orr	Orr Rgnl	4/2151	01/24/14	NDB RWY 13, Amdt 8.
3/6/2014	NY	New York	La Guardia	4/2156	01/27/14	RNAV (GPS) RWY 31, Amdt 1B.
3/6/2014	NY	New York	La Guardia	4/2158	01/27/14	RNAV (GPS) RWY 13, Amdt 1A.
3/6/2014	GA	Cartersville	Cartersville	4/2456	01/24/14	LOC RWY 19, Amdt 3.
3/6/2014	OH	Sebring	Tri-City	4/2492	01/24/14	VOR OR GPS RWY 17, Amdt 3B.
3/6/2014	FL	Winter Haven	Winter Haven's Gilbert	4/2495	01/24/14	RNAV (GPS) RWY 5, Amdt 1.
3/6/2014	MA	Falmouth	Cape Cod Coast Guard Air Station.	4/2615	01/24/14	TACAN RWY 32, Orig.
3/6/2014	MA	Falmouth	Cape Cod Coast Guard Air station.	4/2616	01/24/14	TACAN RWY 23, Orig.
3/6/2014	MA	Falmouth	Cape Cod Coast Guard Air Station.	4/2617	01/24/14	NDB RWY 23, Orig.
3/6/2014	MA	Falmouth	Cape Cod Coast Guard Air Station.	4/2618	01/24/14	ILS OR LOC RWY 23, Amdt 1.
3/6/2014	FL	Jacksonville	Jacksonville Intl	4/2620	01/27/14	VOR/DME RWY 32, Amdt 2.
3/6/2014	MS	Holly Springs	Holly Springs-Marshall County.	4/2693	01/24/14	Takeoff Minimums and (Obstacle) DP, Amdt 1.
3/6/2014	IN	Bedford	Virgil I Grissom Muni	4/2725	01/27/14	VOR/DME RWY 13, Amdt 10A.
3/6/2014	MN	Mora	Mora Muni	4/2726	01/27/14	NDB OR GPS RWY 35, Amdt 3A.
3/6/2014	OK	Enid	Enid Woodring Rgnl	4/2748	01/24/14	RNAV (GPS) RWY 35, Orig-A.
3/6/2014	OK	Enid	Enid Woodring Rgnl	4/2749	01/24/14	ILS OR LOC RWY 35, Amdt 5B
3/6/2014	SC	Greenville	Greenville Downtown	4/2967	01/24/14	ILS OR LOC RWY 1, Amdt 29A.
3/6/2014	SC	Greenville	Greenville Downtown	4/2968	01/24/14	RNAV (GPS) RWY 1, Orig-A.
3/6/2014	SC	Greenville	Greenville Downtown	4/2969	01/24/14	NDB RWY 1, Amdt 22A.
3/6/2014	SC	Greenville	Greenville Downtown	4/2970	01/24/14	RNAV (GPS) RWY 19, Orig-A.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
3/6/2014	SC	Greenville	Greenville Downtown	4/2971	01/24/14	RNAV (GPS) RWY 10, Orig-A.
3/6/2014	SC	Greenville	Greenville Downtown	4/2972	01/24/14	RADAR-1, Amdt 13A.
3/6/2014	ME	Norridgewock	Central Maine Arpt Of Norridgewock.	4/2986	01/24/14	VOR/DME RWY 3, Amdt 2A.
3/6/2014	MI	Escanaba	Delta County	4/3036	01/30/14	RNAV (GPS) RWY 36, Orig.
3/6/2014	SC	Orangeburg	Orangeburg Muni	4/4151	01/27/14	RNAV (GPS) RWY 17, Orig.
3/6/2014	NY	Lake Placid	Lake Placid	4/4675	01/28/14	RNAV (GPS) A, Orig-A.
3/6/2014	NY	Lake Placid	Lake Placid	4/4676	01/28/14	RNAV (GPS) RWY 14, Orig.
3/6/2014	MN	Orr	Orr Rgnl	4/4935	01/29/14	RNAV (GPS) RWY 13, Orig.
3/6/2014	ND	Devils Lake	Devils Lake Rgnl	4/4936	01/29/14	VOR RWY 21, Orig.

[FR Doc. 2014–04300 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30943; Amdt. No. 3577]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective March 5, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 5, 2014.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the

affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on January 31, 2014.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 6 March 2014

Clayton, AL, Clayton Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Atlanta, GA, Atlanta South Rgnl, RNAV (GPS) RWY 6, Amdt 1A
Kennett, MO, Kennett Memorial, RNAV (GPS) RWY 2, Amdt 1
Kennett, MO, Kennett Memorial, RNAV (GPS) RWY 20, Amdt 1
Kennett, MO, Kennett Memorial, Takeoff Minimums and Obstacle DP, Amdt 2
Kennett, MO, Kennett Memorial, VOR/DME RWY 20, Amdt 1
Scobey, MT, Scobey, Takeoff Minimums and Obstacle DP, Amdt 1
Dallas, TX, Collin County Rgnl At Mc Kinney, ILS OR LOC RWY 18, Amdt 5
Guernsey, WY, Camp Guernsey, NDB RWY 32, Amdt 1A
Guernsey, WY, Camp Guernsey, RNAV (GPS) RWY 32, Orig-A

Effective 3 April 2014

Kipnuk, AK, Kipnuk, Takeoff Minimums and Obstacle DP, Amdt 1
Muscle Shoals, AL, Northwest Alabama Rgnl, ILS Y OR LOC/DME Y RWY 29, Orig
Muscle Shoals, AL, Northwest Alabama Rgnl, ILS Z OR LOC/DME Z RWY 29, Amdt 6
Muscle Shoals, AL, Northwest Alabama Rgnl, RNAV (GPS) RWY 11, Amdt 2
Muscle Shoals, AL, Northwest Alabama Rgnl, RNAV (GPS) RWY 18, Amdt 1
Muscle Shoals, AL, Northwest Alabama Rgnl, RNAV (GPS) RWY 29, Amdt 2
Muscle Shoals, AL, Northwest Alabama Rgnl, RNAV (GPS) RWY 36, Amdt 1
Muscle Shoals, AL, Northwest Alabama Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Davis, CA, University, RNAV (GPS) RWY 17, Orig-A
Alma, GA, Bacon County, RNAV (GPS) RWY 15, Amdt 2
Alma, GA, Bacon County, RNAV (GPS) RWY 33, Amdt 1
Alma, GA, Bacon County, Takeoff Minimums and Obstacle DP, Orig-A
Plains, GA, Peterson Field, Takeoff Minimums and Obstacle DP, Orig, CANCELED
Lacon, IL, Marshall County, GPS RWY 13, Orig, CANCELED
Lacon, IL, Marshall County, GPS RWY 31, Orig, CANCELED
Lacon, IL, Marshall County, RNAV (GPS) RWY 13, Orig
Okolona, MS, Okolona Muni-Richard Stovall Field, RNAV (GPS) RWY 18, Amdt 1
Okolona, MS, Okolona Muni-Richard Stovall Field, RNAV (GPS) RWY 36, Amdt 1
Clayton, NM, Clayton Muni Airpark, NDB RWY 2, Amdt 1, CANCELED
Clayton, NM, Clayton Muni Airpark, NDB RWY 20, Amdt 1, CANCELED
Houston, TX, Pearland Rgnl, RNAV (GPS) RWY 32, Amdt 4
Houston, TX, Pearland Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Taylor, TX, Taylor Muni, RNAV (GPS) RWY 17, Orig
Port Townsend, WA, Jefferson County Intl, RNAV (GPS)-A, Orig-A

RESCINDED: On January 17, 2014 (79 FR 3072), the FAA published an Amendment in Docket No. 30936, Amdt No. 3571 to Part 97 of the Federal Aviation Regulations under section 97.23. The following entry for Santa Monica, CA, effective 6 February 2014 is hereby rescinded in its entirety:
Santa Monica, CA, Santa Monica Muni, VOR–A, Amdt 11

[FR Doc. 2014–04295 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1005

[Docket No. FR–5772–F–01]

RIN 2577–AC91

Conforming Amendment to the Section 184 Indian Housing Loan Guarantee Program Regulations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing the Section 184 Indian Housing Loan Guarantee program (Section 184 program) to conform to a recent statutory change. The 2013 Consolidated and Further Continuing Appropriations Act amends section 184(d) of the Housing and Community Development Act of 1992 by authorizing HUD to increase the fee for the guarantee of Section 184 loans up to 3 percent of the principal obligation of the loan and to establish the amount of the fee by publishing a notice in the **Federal Register**. This final rule amends the Section 184 Indian Housing Loan Guarantee Program regulations to reflect this new authority. By notice published elsewhere in today's **Federal Register**, HUD is exercising this authority to increase the loan guarantee fee to 1.5 percent of the principal obligation from the current rate of 1 percent.

DATES: *Effective Date:* April 4, 2014.

FOR FURTHER INFORMATION CONTACT: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW.,

Room 4126, Washington, DC 20410; telephone number 202–401–7914 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 184 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), as amended by the Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104–330, approved October 26, 1996), established the Section 184 program to provide access to sources of private financing to Indian families, Indian housing authorities, and Indian tribes that otherwise could not acquire housing financing because of the unique legal status of Indian land. Because title to trust or restricted land is inalienable, title cannot be conveyed to eligible Section 184 program borrowers. As a consequence, financial institutions are unable to utilize the land as security in mortgage lending transactions. The Section 184 program addresses obstacles to mortgage financing on trust land and in other Indian and Alaska Native areas by giving HUD the authority to guarantee loans to eligible persons and entities to construct, acquire, refinance, or rehabilitate one-to-four family dwellings in these areas.

The Section 184 program charges borrowers a guarantee fee to participate in the program and the fee, along with other funds and appropriations, is used to fulfill obligations of the Secretary with respect to the loans guaranteed under this section. Section 184(d) of the Housing and Community Development Act of 1992 limited the guarantee fee to a maximum of 1 percent of the principal obligation, and HUD set the guarantee fee at 1 percent by regulation. (See 24 CFR 1005.109.) The 2013 Consolidated Appropriations Act (Pub. L. 113–6, approved March 26, 2013) (2013 Appropriations Act) amends section 184(d) of the Housing and Community Development Act of 1992 by authorizing the Secretary to increase the fee for the guarantee of loans up to 3 percent of the principal obligation of the loan and to establish the amount of the fee by publishing a notice in the **Federal Register**.

II. This Final Rule

This final rule codifies in regulation HUD's new authority by revising the guarantee fee language in § 1005.109 to conform to the new 2013 Consolidated Appropriations Act language. Specifically, HUD replaces the language preventing the guarantee fee from exceeding 1 percent of the of the loan amount with the language authorizing HUD to increase the fee for the guarantee of loans up to 3 percent of the principal obligation of the loan, or any increase established by statute, and to establish the amount of the fees and premiums through notice published in the **Federal Register**. Elsewhere in today's **Federal Register**, and consistent with the statutory authority of the 2013 Appropriations Act, HUD has published a notice that increases the loan guarantee fee to 1.5 percent of the principal obligation from the current rate of 1 percent.

III. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, provides in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary or contrary to the public interest.''

HUD finds that good cause exists to publish this rule for effect without soliciting public comment in that prior public procedure is unnecessary. This final rule codifies, in its Section 184 regulations, without change, HUD's new statutory authority to increase the Section 184 guarantee fee up to 3 percent of the principal obligation.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. As discussed above in this preamble, this final rule updates the regulation to reflect HUD's new statutory authority only. As a result, this rule was determined to not be a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Since notice and comment rulemaking is not necessary for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This final rule does not impose any federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

List of Subjects in 24 CFR Part 1005

Indians, Loan programs-Indians, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated above, HUD amends 24 CFR part 1005 to read as follows:

PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

■ 1. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 1715z–13a, 15 U.S.C. 1639c, 42 U.S.C. 3535(d).

■ 2. Revise § 1005.109 to read as follows:

§ 1005.109 Guarantee Fees.

HUD shall establish and collect, at the time of issuance of the guarantee, a fee for the guarantee of loans under this section, in an amount not exceeding 3 percent of the principal obligation of the loan, or any increase established by statute. HUD shall establish the amount of the fee by publishing a notice in the **Federal Register**, and shall deposit any fees collected under this section in the Indian Housing Loan Guarantee Fund.

Dated: February 21, 2014.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2014–04514 Filed 3–4–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2014–0001]

RIN 0651–AC92

Changes to Continued Prosecution Application Practice

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Interim rule.

SUMMARY: The Leahy-Smith America Invents Act (AIA) revised and streamlined the requirements for the inventor's oath or declaration. In implementing the AIA inventor's oath or declaration provisions, the United States Patent and Trademark Office (Office) provided that an applicant may postpone the filing of the inventor's oath or declaration until allowance if the applicant provides an application data sheet indicating the name, residence, and mailing address of each inventor. The rules pertaining to continued prosecution applications (which are applicable only to design applications) require that the prior nonprovisional application of a continued prosecution application be complete, which requires that the prior nonprovisional application contain the inventor's oath or declaration. This interim rule revises the rules pertaining to continued prosecution applications to permit the filing of a continued prosecution application even if the prior nonprovisional application does not contain the inventor's oath or declaration if the continued prosecution application is filed on or after September 16, 2012, and the prior nonprovisional application contains an application data sheet indicating the name, residence, and mailing address of each inventor.

DATES: *Effective Date:* March 5, 2014.

Comment Deadline Date: Written comments must be received on or before May 5, 2014.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *AC92.comments@uspto.gov*. Comments also may be submitted by postal mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

Comments likewise may be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments in plain text are preferred, but comments in ADOBE® portable document format or MICROSOFT WORD® format are also acceptable. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

Comments will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, at (571) 272–7727.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: This interim rule permits the filing of a continued prosecution application even if the prior nonprovisional application does not contain the inventor's oath or declaration. This change is to avoid the need for applicants to file the inventor's oath or declaration in an application in order to file a continued prosecution application of that application.

Summary of Major Provisions: This interim rule provides that the prior nonprovisional application of a continued prosecution application that was filed on or after September 16, 2012 is not required to contain the inventor's oath or declaration if the prior nonprovisional application contains an application data sheet indicating the name, residence, and mailing address of each inventor.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

Background: The Office has revised the rules of practice pertaining to the inventor's oath or declaration to permit an applicant to postpone the filing of the inventor's oath or declaration until payment of the issue fee if the applicant provides an application data sheet indicating the name, residence, and mailing address of each inventor. *See Changes To Implement the Inventor's Oath or Declaration Provisions of the Leahy-Smith America Invents Act,* 77 FR 48776, 48779–80 (Aug. 14, 2012), and *Changes to Implement the Patent Law Treaty,* 78 FR 62367, 62376 (Oct. 21, 2013). The rules of practice pertaining to continued prosecution applications (which are applicable only to design applications) require that the prior nonprovisional application of a continued prosecution application be a design application that is complete as defined by 37 CFR 1.51(b). *See* 37 CFR 1.53(d)(1)(ii) (requires that the prior nonprovisional application of a continued prosecution application be a design application that is complete as defined by 37 CFR 1.51(b)). 37 CFR 1.51(b) in turn requires that an application contain the inventor's oath or declaration to be complete. *See* 37 CFR 1.51(b)(2). This interim rule amends 37 CFR 1.53(d)(1)(ii) to permit the filing of a continued prosecution application even if the prior nonprovisional application does not contain the inventor's oath or declaration if the continued prosecution application is filed on or after September 16, 2012, and the prior nonprovisional application contains an

application data sheet indicating the name, residence, and mailing address of each inventor. This change is to avoid the need for applicants to file the inventor's oath or declaration in an application in order to file a continued prosecution application of that application.

Discussion of Specific Rules

The following is a discussion of the amendments to Title 37 of the Code of Federal Regulations, Part 1.

Section 1.53: Section 1.53(d)(1)(ii) is amended to change ''[t]he prior nonprovisional application is a design application that is complete as defined by § 1.51(b)'' to ''[t]he prior nonprovisional application is a design application that is complete as defined by § 1.51(b), except for the inventor's oath or declaration if the application is filed on or after September 16, 2012, and the prior nonprovisional application contains an application data sheet meeting the conditions specified in § 1.53(f)(3)(i).''

Rulemaking Considerations

A. Administrative Procedure Act: This interim rule revises the procedures that apply to the filing of a continued prosecution application. The changes in this interim rule do not change the substantive criteria of patentability. Therefore, the changes proposed in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See JEM Broad. Co.* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994) (''[T]he critical feature of the procedural exception [in 5 U.S.C. 553(b)(A)] is that it covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency'') (quoting *Batterton* v. *Marshall,* 648 F.2d 694, 707 (D.C. Cir. 1980)); *see also Bachow Commc'ns Inc.* v. *F.C.C.,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims).

In addition, the Office, pursuant to authority at 5 U.S.C. 553(b)(3)(B), finds good cause to adopt the changes in this interim rule without prior notice and an opportunity for public comment, as such procedures are contrary to the public interest. Delay in the promulgation of this rule to provide notice and comment procedures would cause harm to those applicants who file a continued prosecution application where the prior nonprovisional application does not contain the inventor's oath or declaration. Immediate implementation of the changes in this interim rule is in the public interest because: (1) The public does not need time to conform its conduct as the changes in this interim rule merely ease the requirements for filing a continued prosecution application; and (2) those applicants who are currently ineligible to file a continued prosecution application because the prior nonprovisional application does not contain the inventor's oath or declaration will benefit from the changes in this interim rule. *See Nat'l. Customs Brokers & Forwarders Ass'n* v. *U.S.,* 59 F.3d 1219, 1223–24 (Fed. Cir. 1995).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c), 35 U.S.C. 2(b)(2)(B), or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). In addition, pursuant to authority at 5 U.S.C. 553(d)(1), the changes in this interim rule may be made immediately effective because they relieve restrictions in the requirements for filing a continued prosecution application.

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking 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 under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. 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 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will

submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this interim rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this interim rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This interim rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). This rulemaking does not impose any additional collection requirements under the Paperwork Reduction Act which are subject to further review by OMB.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.53 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(d) * * *

(1) * * *

(ii) The prior nonprovisional application is a design application that is complete as defined by § 1.51(b), except for the inventor's oath or declaration if the application is filed on or after September 16, 2012, and the prior nonprovisional application contains an application data sheet meeting the conditions specified in § 1.53(f)(3)(i).

* * * * *

Dated: February 27, 2014.

Michelle K. Lee,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2014–04807 Filed 3–4–14; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2014–0003]

RIN 0651–AC93

Changes to Permit Delayed Submission of Certain Requirements for Prioritized Examination

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Interim rule.

SUMMARY: The Leahy-Smith America Invents Act includes provisions for prioritized examination of patent applications (also referred to as ''Track I''), which have been implemented by the United States Patent and Trademark Office (Office) in previous rulemakings. This interim rule simplifies the Track I prioritized examination practice to reduce the number of requests for prioritized examination that must be dismissed. In order to enable rapid processing and examination of those applications, the previous rulemakings provided that an application having a request for Track I prioritized examination requires, upon filing of the application, an inventor's oath or declaration and all required fees, and contains no more than four independent claims, thirty total claims, and no multiple dependent claims. Accordingly, any request for Track I prioritized examination not meeting all of the requirements on filing must be dismissed. The Office has found that many such dismissals are due to the application as filed not including a properly executed inventor's oath or declaration, not including the excess claims fees or application size fee due, or improperly including a multiple dependent claim or claims in excess of the permitted number. The Office has determined that the time periods for meeting those requirements when filing a request for Track I prioritized examination could be expanded while maintaining the Office's ability to timely examine the patent application.

DATES: *Effective Date:* March 5, 2014.

Applicability Date: The changes to 37 CFR 1.102 apply only to applications filed under 35 U.S.C. 111(a) on or after September 16, 2012, in which a first action has not been mailed.

Comment Deadline Date: Written comments must be received on or before May 5, 2014.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *AC93.comments@uspto.gov*. Comments also may be submitted by postal mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of John R. Cottingham, Director, Office of Petitions, Office of the Deputy Commissioner for Patent Examination Policy.

Comments further may be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://*

www.regulations.gov) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: John R. Cottingham, Director, Office of Petitions, at (571) 272–7079, or Michael T. Cygan, Senior Legal Advisor, Office of Patent Legal Administration, at (571) 272–7700.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: This interim rule simplifies prioritized examination (''Track I'') practice to reduce the number of requests for prioritized examination that must be dismissed and to improve access to prioritized examination.

Summary of Major Provisions: The prioritized examination provisions (37 CFR 1.102(e)) currently require that: (1) The inventor's oath or declaration be present on filing, (2) all fees be paid upon filing, and (3) the application as filed contain no more than four independent claims, no more than thirty total claims, and no multiple dependent claims. This interim rule revises 37 CFR 1.102(e) to provide that: (1) The filing of an inventor's oath or declaration may be postponed in accordance with 37 CFR 1.53(f)(3) if an application data sheet meeting the conditions specified in 37 CFR 1.53(f)(3)(i) is present upon filing; (2) if an application contains more than four independent claims, more than thirty total claims, or any multiple dependent claim, the applicant will be given a non-extendable one-month period to file an amendment to cancel any independent claims in excess of four, any total claims in excess of thirty, and any multiple dependent claim; and (3) any excess claims fees due under 37 CFR 1.16(h), (i), or (j) and any application size fee due under 37 CFR 1.16(s) is not required to be paid on filing.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

Background: Section 11(h) of the Leahy-Smith America Invents Act provides for prioritized examination of an application. *See* Public Law 112–29, 125 Stat. 283, 324 (2011). Section 11(h) of the Leahy-Smith America Invents Act also provides that the Office may by regulation prescribe conditions for acceptance of a request for prioritized examination. *See id.*

The Office implemented the Leahy-Smith America Invents Act prioritized examination provision for applications upon filing, referred to as ''Track I,'' in a final rule published on September 23, 2011. *See Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures under the Leahy-Smith America Invents Act,* 76 FR 59050 (September 23, 2011). The Office subsequently implemented prioritized examination for pending applications after the filing of a proper request for continued examination under 35 U.S.C. 132(b) and 37 CFR 1.114. *See Changes to Implement the Prioritized Examination for Requests for Continued Examination,* 76 FR 78566 (December 19, 2011).

The rule implementing prioritized examination, 37 CFR 1.102(e), sets forth the requirements that must be met to permit a request for prioritized examination to be granted. These requirements were selected after public discussion with, and feedback from, patent practitioners and stakeholders. These requirements were selected in such a manner as to permit the Office to examine applications undergoing prioritized examination in a timely manner. In furtherance of timely examination, the Office required that requests for Track I prioritized examination conform to all of the requirements listed in 37 CFR 1.102(e)(1) as of the filing date of the application.

Upon review of the implementation of the Track I program, the Office has found that an unexpected number of requests for prioritized examination are being dismissed for failure to meet the requirements of 37 CFR 1.102(e) upon filing. In order to improve access to prioritized examination, the Office has reevaluated the necessity for each requirement to be met upon filing. The Office has determined that permitting certain requirements to be met after the filing date of the application would avoid dismissal of bona fide attempts to request Track I prioritized examination, while resulting in only minimal delay in the processing of the Track I request and the subsequent examination.

Under the procedure set forth in this interim rule, the requirements for prioritized examination are amended to permit an applicant to postpone submission of an inventor's oath and declaration after the filing date of the application, so long as the application as filed includes an executed application data sheet meeting the conditions specified in 37 CFR 1.53(f)(3)(i). Additionally, where a request for prioritized examination is received for an application having more than four independent claims, more than thirty total claims, or any multiple dependent claim, the Office will notify the applicant and provide a non-extendable period of one month in which applicant may cancel or amend the claims accordingly. If applicant provides the required claim amendment or cancellation within that period, the Track I request will be considered again. If the applicant fails to place the application in conformance with the above-listed claim requirements within that period, no further corrective period will be given, and the Track I request will be dismissed.

Under the procedure set forth in this interim rule, any excess claims fees due under 37 CFR 1.16(h), (i), or (j) and any application size fee due under 37 CFR 1.16(s) is not required to be paid on filing. An application in which excess claims fees or the application size fee are outstanding will be treated under the provisions of 37 CFR 1.53(f)(4), which require that those fees be paid prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency.

Discussion of Specific Rules

The following is a discussion of the amendments to Title 37 of the Code of Federal Regulations, Part 1.

Section 1.102: Section 1.102(e)(1) is revised to eliminate the requirement that the inventor's oath or declaration be submitted on the filing date. An application having a properly executed application data sheet that meets the requirements set forth in § 1.53(f)(3)(i) will be eligible for prioritized examination (provided that the conditions of § 1.102(e) as revised in this interim rule are met). Pursuant to § 1.41(b), such an application data sheet sets the inventorship for the application, and applicant may delay submission of the inventor's oath or declaration no later than the date on which the issue fee for the patent is paid. *See Changes*

To Implement the Inventor's Oath or Declaration Provisions of the Leahy-Smith America Invents Act, 77 FR 48776, 48779–80 (Aug. 14, 2012), and *Changes to Implement the Patent Law Treaty,* 78 FR 62367, 62376 (Oct. 21, 2013). Accordingly, § 1.102(e)(1) is revised to provide that the application must include a specification as prescribed by 35 U.S.C. 112 including at least one claim, a drawing when necessary, and the inventor's oath or declaration on filing, except that the filing of an inventor's oath or declaration may be postponed in accordance with § 1.53(f)(3) if an application data sheet meeting the conditions specified in § 1.53(f)(3)(i) is present upon filing.

Section 1.102(e)(1) is also revised to eliminate the requirements that an application include any excess claims fees due under § 1.16(h), (i), or (j) or any application size fee due under § 1.16(s) on filing. An application in which excess claims fees or the application size fee are outstanding will be treated under the provisions of § 1.53(f)(4), which require that those fees be paid prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

Section 1.102(e)(1) is further revised to eliminate the requirements that an application not contain more than four independent claims, not contain more than thirty total claims, and not contain any multiple dependent claim upon filing. Upon review of the Track I request, the Office will provide applicant a non-extendable one-month period in which to submit an amendment cancelling claims, or removing multiple dependencies. If, upon expiration of that one-month period, the application still contains more than four independent claims, more than thirty total claims, or a multiple dependent claim, the request for prioritized examination will be dismissed.

Section 1.102(e)(1) maintains the requirement that an application for which prioritized examination is requested must include payment of the basic filing fee, the search fee, and examination fees on filing, or the application will be ineligible for Track I. Specifically, § 1.102(e)(1) as revised requires that if the application is a utility application, it must be filed via the Office's electronic filing system and include the filing fee under § 1.16(a), search fee under § 1.16(k), and examination fee under § 1.16(o) upon filing, and that if the application is a plant application, it must include the filing fee under § 1.16(c), search fee under § 1.16(m), and examination fee under § 1.16(q) upon filing.

Section 1.102(e) also maintains the requirement that an application for which prioritized examination is sought must be accompanied by the prioritized examination fee set forth in § 1.17(c), the processing fee set forth in § 1.17(i)(1), and the publication fee set forth in § 1.18(d). The request and each of these fees must be present on the same day the application is filed, or the application will be ineligible for Track I.

This interim rule, while providing additional time for the filing of an inventor's oath or declaration, for payment of any excess claims fees or any application size fee, and for filing an amendment to limit an application to four independent claims and thirty total claims without any multiple dependent claim, does not remove the requirement that those items be filed within the appropriate time period. Applicants are reminded that any request for an extension of time will cause an outstanding Track I request to be dismissed, or cause an application to lose its Track I status if previously conferred upon that application. *See Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures under the Leahy-Smith America Invents Act,* 76 FR 59050 (September 23, 2011).

To reduce delays in processing the application, the Office recommends that all of the requirements under § 1.102(e)(1) be met upon filing. An applicant should not delay meeting a requirement merely because an additional time period will be supplied. Applicants should recognize that the twelve-month goal for final disposition of the application is measured from the time the Track I request is granted, not from the filing of the application. As an applicant is seeking Track I prioritized examination to receive rapid examination, any delay in meeting the requirements for Track I merely adds processing time onto the twelve-month goal for final disposition of the application.

The changes in this interim rule apply to any application filed under 35 U.S.C. 111(a) on or after September 16, 2012, in which a first action has not been mailed. An applicant may have previously submitted a Track I request which was dismissed, but would have been granted, or the applicant would have been provided additional time to meet a requirement, if the changes to the interim rule had been in effect at the time of the dismissal. An applicant may file a request for reconsideration of the dismissal of the previous Track I request based upon the changes set forth in this interim rule if: (1) The application is still pending; (2) the application contains, or has been amended to contain, no more than four independent claims, no more than thirty total claims, and no multiple dependent claims; and (3) a first Office action has not been mailed in the application. Any such petition should be directed to the Office of Petitions.

Rulemaking Considerations

A. Administrative Procedure Act: This interim rule revises the procedures that apply to applications for which an applicant has requested Track I prioritized examination. The changes in this interim rule do not change the substantive criteria of patentability. Therefore, the changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See JEM Broad. Co.* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994) (''[T]he critical feature of the procedural exception [in 5 U.S.C. 553(b)(A)] is that it covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency'') (quoting *Batterton* v. *Marshall,* 648 F.2d 694, 707 (D.C. Cir. 1980)); *see also Bachow Commc'ns Inc.* v. *F.C.C.,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). In addition, pursuant to authority at 5 U.S.C. 553(d)(1), the changes in this interim rule may be made immediately effective because they relieve restrictions in the requirements for requesting prioritized examination of an application.

Moreover, the Office, pursuant to authority at 5 U.S.C. 553(b)(3)(B), finds good cause to adopt the changes in this interim rule without prior notice and an opportunity for public comment, as

such procedures are contrary to the public interest. Delay in the promulgation of this interim rule to provide prior notice and comment procedures would cause harm to those applicants who file a request for Track I prioritized examination in an application that does not contain the inventor's oath or declaration and to those applicants who filed a request for prioritized examination in an application containing more than four independent claims, more than thirty total claims, or a multiple dependent claim. Immediate implementation of the changes in this interim rule is in the public interest because: (1) The public does not need time to conform its conduct as the changes in this interim rule do not add any additional requirement for requesting prioritized examination of an application; and (2) those applicants who are currently ineligible for prioritized examination due to the previously stated reasons will benefit from the changes in this interim rule. *See Nat'l. Customs Brokers & Forwarders Ass'n* v. *U.S.,* 59 F.3d 1219, 1223–24 (Fed. Cir. 1995).

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking 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 under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. 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 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this interim rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this interim rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This interim rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). An applicant who wishes to participate in the prioritized examination program must submit a certification and request to participate in the prioritized examination program, preferably by using Form PTO/AIA/424. OMB has determined that, under 5 CFR 1320.3(h), Form PTO/AIA/424 does not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995. This rule making does not impose any additional collection requirements under the Paperwork Reduction Act which are subject to further review by OMB.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a

penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.102 is amended by revising paragraph (e)(1) to read as follows:

§ 1.102 Advancement of examination.

* * * * *

(e) * * *

(1) A request for prioritized examination may be filed with an original utility or plant nonprovisional application under 35 U.S.C. 111(a). The application must include a specification as prescribed by 35 U.S.C. 112 including at least one claim, a drawing when necessary, and the inventor's oath or declaration on filing, except that the filing of an inventor's oath or declaration may be postponed in accordance with § 1.53(f)(3) if an application data sheet meeting the conditions specified in § 1.53(f)(3)(i) is present upon filing. If the application is a utility application, it must be filed via the Office's electronic filing system and include the filing fee under § 1.16(a), search fee under § 1.16(k), and examination fee under § 1.16(o) upon filing. If the application is a plant application, it must include the filing fee under § 1.16(c), search fee under § 1.16(m), and examination fee under § 1.16(q) upon filing. The request for prioritized examination in compliance with this paragraph must be present upon filing of the application, except that the applicant may file an amendment to cancel any independent claims in excess of four, any total claims in excess of thirty, and any multiple dependent claim not later than one month from a first decision on the request for prioritized examination. This one-month time period is not extendable.

* * * * *

Dated: February 27, 2014.

Michelle K. Lee,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2014–04806 Filed 3–4–14; 8:45 am]

BILLING CODE 3510–16–P

POSTAL SERVICE

39 CFR Part 121

Service Standards for Destination Sectional Center Facility Rate Standard Mail

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising the service standards for Standard Mail that is eligible for Destination Sectional Center Facility (DSCF) rates. These changes will allow a more balanced distribution of DSCF Standard Mail across delivery days.

DATES: *Effective Date:* April 10, 2014.

FOR FURTHER INFORMATION CONTACT: Anthony Frost, Industry Engagement and Outreach, at 202–268–8093; or Prathmesh Shah, Processing and Distribution Center Operations, at 404–792–3195.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Comments
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I. Introduction

On January 3, 2014, the Postal Service published a proposed rule (the Proposed Rulemaking) in the **Federal Register** to solicit public comment on a proposal to revise service standards for Standard Mail eligible for DSCF rates.[1] The comment period for the Proposed Rulemaking closed on February 3, 2014. The Postal Service received 13 written comments in response to the Proposed Rulemaking.

After considering comments received in response to the Proposed Rulemaking, the Postal Service has determined to issue the proposed rule as a final rule. As described in the Proposed Rulemaking, the final rule seeks to address the imbalance in the proportion of volume with a Monday delivery expectation under current service standards, and the resulting burden on resources associated with Monday delivery operations, by adjusting the service standards applicable to DSCF Standard Mail entered on designated days of the week. The Postal Service believes that the initiative will help improve the efficiency of its operations, and that it complies with all applicable statutory requirements. This document explains the new rule.

II. Comments

In the Proposed Rulemaking, the Postal Service sought public comment on proposed revisions to the service standards for Standard Mail that is eligible for DSCF rates. The revisions would change the service standard (a) from three days to four days for Standard Mail pieces that are eligible for a DSCF rate and that are properly accepted before the day zero Critical Entry Time on a Friday or Saturday, and (b) from four days to five days for DSCF Standard Mail properly accepted at the SCF in San Juan, Puerto Rico and destined to the United States Virgin Islands, and properly accepted DSCF Standard Mail destined to American Samoa. The DSCF Standard Mail service standard change is aimed at leveling out the volume in the network, and reducing the burdens and costs associated with the Monday delivery of a disproportionate amount of volume.

A. Overview

The Postal Service received 13 written comments in response to the Proposed Rulemaking. These responses came from a variety of sources, including businesses, publishers, mailer trade associations, and others. Most of the written comments received in response to the Proposed Rulemaking opposed the service standard change proposed for Standard Mail eligible for DSCF rates. Some commenters questioned various aspects of the initiative but took no position on the proposed rule.

The commenters that opposed the DSCF Standard Mail service standard change focused on the potential negative impact of the service standard change on service, and perceived flaws in the process of developing the service standard change. With respect to the potential impact on service, commenters focused primarily on the potential for the proposed rule to reduce the

[1] Service Standards for Destination Sectional Center Facility Rate Standard Mail, 79 FR 376 (Jan. 3, 2014). Concurrent with this rulemaking, on December 27, 2013, the Postal Service submitted a request to the Postal Regulatory Commission (PRC) for an advisory opinion on the service changes associated with the proposed change in service standards for Standard Mail eligible for DSCF rates, in accordance with 39 U.S.C. 3661(b). PRC Docket No. N2014–1, United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services (Dec. 27, 2013). Documents pertaining to the Request are available at the PRC Web site, *http://www.prc.gov.*

predictability and quality of delivery, increase costs for both mailers and the Postal Service, and unreasonably burden many customers. In addressing procedural issues, commenters expressed dissatisfaction with the process leading up to the Proposed Rulemaking, including the live testing, and identified multiple issues that, in their opinion, had not been considered adequately.

A small minority of written comments supported aspects of the Proposed Rulemaking, including the Postal Service's use of intelligent mail data to identify cost savings opportunities and its industry outreach to explain the concept.

B. Responses to Comments

This section presents the commenters' concerns by category, along with the Postal Service's responses to these concerns.

1. Effect on Volume

Some commenters stated that the DSCF Standard Mail service standard change might lead to accelerated volume declines. In response to these commenters, the Postal Service notes that the initiative is limited to Standard Mail, and will not impact other classes of mail. Some of the commenters asserted that the volume declines would result from the combination of Postal Service initiatives, including rate increases resulting from the exigency filing and other rate changes, and facility closings that occurred independent of the DSCF Standard Mail service standard change. However, no commenter offered any empirical basis for the belief that the service change, by itself or in conjunction with recent price increases, could precipitate an accelerated decline in DSCF Standard Mail volumes. It is worth noting that no evidence in support of such belief was presented to the Postal Regulatory Commission during its review of the proposed service change in Docket No. N2014–1.

In contrast to concerns about the potential negative impact on volume that could result from the DSCF Standard Mail service standard change, at least one commenter explained that its members preferred different delivery days for their mail and their competitors' mail, suggesting that load leveling could make DSCF Standard Mail more valuable for some mailers. The Postal Service shares the view that this change, with its consequent effect on leveling volume at the beginning of the week, could create the benefit of reducing the proportion of Standard Mail delivered on the heaviest delivery day of the week, and decreasing the likelihood of an individual piece being overlooked by the recipient because it arrived as part of a disproportionately heavy batch of mail on a given day.

2. Effect on Mailers

Some commenters criticize the service change proposal as imposing on affected mailers an unfair share of the burden of cost containment necessary to improve postal financial stability, and question whether the Postal Service understands the mailing industry's desire for predictability, reliability, transparency, and competitive rates. The potential sources of the additional burden identified by commenters include increased logistical costs necessary to meet in-home dates and accommodate customer delivery requirements that will not change in response to the DSCF Standard Mail service standard change, and reduced opportunities for discounts achieved through comingling and copalletization. The Postal Service plans to work with the mailing industry in helping mailers adapt to the DSCF Standard Mail service standard change and continue their effective use of the mail, through the IMb Planning Tool and other channels offered by the Postal Service. It should be noted that during the months of April, May, and June in 2014, the Postal Service will offer a Premium Advertising Mail promotion, which offers an upfront discount on First-Class Mail presort postage on mailpieces composed entirely of marketing or advertising content. But the significance of any burdens resulting from the DSCF Standard Mail service standard change is unclear because despite the concerns raised in response to the Proposed Rulemaking, the Postal Service has observed no change in mailer behavior and experienced no increase in customer complaints in locations affected by testing associated with the DSCF Standard Mail service standard change.

Some mailers expressed concerns about the difficulty in obtaining Facility Access and Shipment Tracking (FAST) appointments at favorable times, and the potential for the new rule to condense mailers' internal operating schedules. The Postal Service acknowledges that some mailers may need to adjust their mail entry patterns. Accordingly, in response to these concerns, the Postal Service will work with mailers to provide FAST appointments that better suit their needs. At the same time, to enhance the availability of FAST appointments, mailers must take corrective action to address the fact that, for more than half of the time slots reserved via the FAST system, no one shows up to present mail for acceptance. The scheduling of excessive, unused appointments causes the FAST system to report as unavailable mail acceptance opportunities at facilities that actually are available.

One commenter requested that the service standard change preserve and incorporate postal policy regarding in-home delivery dates requested for non-machinable, non-barcoded Standard Mail entered as Saturation Mail. Under current policy, local postal managers are expected to respond to properly submitted in-home delivery date requests by exploring whether, in the normal course of operations, opportunities exist to process and deliver mail in a manner that is consistent with applicable service standards and requested in-home dates. The DSCF Standard Mail service change is not intended to affect the current procedures through which mailers may request delivery on or by a specific date within the applicable service standard. However, such requests do not establish new service standards. Accordingly, there is no basis for referencing them in the regulations published at 39 CFR part 121.

3. Alternatives

Commenters offered suggestions for alternative operational changes. For example, some commenters cited their utilization of a flexible work force to meet customer needs as a model available to the Postal Service that would enable the preservation of current service standards. The Postal Service has increased its use of a flexible workforce, but this increased flexibility alone will not resolve the issues targeted by the DSCF Standard Mail service standard change. The continued delivery of the disproportionate amount of Monday delivery volume under current service standards would require the acquisition of a significant number of additional vehicles and deployment of employees who would be necessary only for Monday delivery operations. Although the Postal Service continues its pursuit of even more flexibility in its workforce, it is limited by restrictions in its current collective bargaining agreements that do not permit implementation of various commenter suggestions for workforce flexibility as alternatives to the DSCF Standard Mail service standard change.

The Postal Service continues its pursuit of other efficiency-enhancing initiatives simultaneously with the final rule, but neither the DSCF Standard Mail service standard change nor any of the other initiatives are sufficient by

themselves to achieve the level of efficiency targeted by the Postal Service. Rather, they are all necessary. From the outset, the Postal Service has made clear that the impetus for the DSCF Standard Mail service change is the improvement of operations by leveling the delivery workload across the days of the week. Although the resulting efficiencies are expected to generate cost reductions, such cost reductions are a consequence of the initiative, not its goal. Accordingly, the load leveling initiative should not be viewed as a centerpiece of the Postal Service's ongoing efforts to align its overall cost and revenues.

4. Scope of Change

Focusing on the scope of the DSCF Standard Mail service standard change, some mailers questioned the justification for including Standard Mail parcels and letters in the service standard change. These mailers view the issues targeted by the DSCF Standard Mail service standard change as limited only to operations concerning Standard Mail flats. However, the Postal Service needs the same flexibility for letter operations as well. Accordingly, the DSCF Standard Mail service standard change applies to both letters and flats. Parcels comprise only a very small proportion of all DSCF Standard Mail. In the interest of minimizing mail processing operational complexity and in the absence of any compelling reason for treating parcels differently, the service change applies to all DSCF Standard Mail.

One commenter questioned whether the issues targeted by DSCF Standard Mail service standard change resulted from Standard Mail volume, suggesting instead that the increase in Monday overtime hours resulted from route consolidation, network consolidation, parcel volume increases, extended casing time, and later carrier arrival at the office. Although a variety of events and conditions could have caused the current situation of a disproportionate amount of mail volume with a Monday delivery expectation, the process associated with the Proposed Rulemaking focused on solutions, rather than on the causes of the current situation.

5. Effect on Election Mail

One commenter expressed a concern about the potential impact of the DSCF Standard Mail service standard change on the reliability and security of election mail delivery. As is the case today, local postal managers will work closely with elections board and political campaign organization mailers to ensure that DSCF Standard Mail continues as a reliable and secure medium of communication. The Postal Service will continue to provide mailers exploring the differences between DSCF Standard Mail and First-Class Mail with information explaining their respective service standards and the long-standing priority of dispatch and processing accorded to First-Class Mail. In addition, the Postal Service will provide information to local elections boards and campaign mailers through multiple channels, including local Postal Customer Councils, its Business Services Network, its online Rapid Information Bulletin Board System, and local Business Mail Entry Units.

6. Rate Cap Implications

One commenter questioned whether the DSCF Standard Mail service standard change might represent an additional price increase with rate cap implications. The Postal Service does not anticipate that the DSCF Standard Mail service standard change will have any rate cap implications.

7. Testing

With respect to the implementation process for the DSCF Standard Mail service standard change, some commenters questioned the adequacy of the South Jersey Operations Test, and encouraged the Postal Service to conduct additional testing before implementation. Consistent with this concern, the Postal Service has scheduled additional testing in the service areas of approximately 30 mail processing facilities nationwide, and intends to incorporate the results of these tests into the national implementation of the DSCF Standard Mail service standard change.

The performance of live testing before implementation is not customary for service standard changes. Under common practice, the Postal Service relies on modeling. Accordingly, the use of live testing at multiple sites should provide the Postal Service with helpful experience that can facilitate successful implementation of the DSCF Standard Mail service standard change.

8. Nonstandard Delivery Weeks

Some commenters expressed a concern regarding the alleged failure of the Postal Service to consider the potential effects on delivery after a three-day weekend or in a five-day delivery environment. On a regular basis, the Postal Service manages the delivery of increased volumes of mail after a three-day weekend, and the DSCF Standard Mail service standard change will not make the challenge presented by that situation more difficult. In the absence of legislative change, the Postal Service has no current plans to implement a five-day delivery environment. However, assuming that mailers would drop ship mail in a five-day environment on the same days as in the present environment, it is expected that the implementation of load leveling would reduce the impact to delivery operations in making the transition to a situation where Standard Mail is delivered five days per week to street addresses.

As the Postal Service implements the final rule, it will remain mindful of the concerns expressed by commenters and will work to minimize those concerns.

III. Statutory Considerations

In addition to considering comments, the Postal Service has considered the requirements of 39 U.S.C. 3691 and other applicable provisions of title 39. Section 3691(b) sets forth objectives that the Postal Service's market-dominant service standards must serve, and section 3691(c) sets forth factors that the Postal Service must take into account when revising the service standards. The Postal Service believes that it has properly considered the subsection (c) factors, and that the revised service standards achieve the subsection (b) objectives.

Since the passage of the Postal Reorganization Act (PRA), the Postal Service has been required to be largely self-supporting. The PRA established a cost-of-service system, which allowed the Postal Service to set prices at levels necessary to fully cover its costs. This system was dramatically altered in 2006 with the passage of the Postal Accountability and Enhancement Act (PAEA). In contrast to the PRA, the PAEA established a price cap system, with strict limitations on price increases for market-dominant product classes. As the PRC has observed, a primary goal of the price cap system is ''to incent the Postal Service to reduce costs and improve efficiency.'' [2]

Section 3691 is situated within this larger context of inducing efficiency gains, and the subsection (c) factors are aligned with that goal in that, taken together, they balance levels of service for customers with the Postal Service's operational and business needs. From the formal rulemaking comments that the Postal Service has received, it is clear that some customers view the current service standards as vitally important, and that some customers would experience difficulties if service standards are changed. On a broader

[2] PRC Docket No. R2010–4, Order No. 547 (Sept. 30, 2010), at 80.

level, however, the Postal Service has received no indication that the public as a whole views the current service standards as an essential element of the mail.

In regard to the subsection (c) factors that relate to the Postal Service's operational and business needs, the Postal Service has already set forth, in the Proposed Rulemaking, the mail volume and financial realities that necessitate the DSCF Standard Mail service standard change. The Postal Service faces an uneven workload for postal delivery operations and a disproportionate allocation of resources to meet Monday delivery expectations, based on current service standards. Specifically, the high volume of Standard Mail with a service standard that creates a Monday delivery expectation contributes to the significant challenge faced by the Postal Service in seeking to achieve efficient and timely completion of delivery operations on Monday, and to make dispatch of collection mail picked up by carriers to mail processing plants for timely cancellation. This general imbalance in the proportion of volume with a Monday delivery expectation contributes significantly to increased overtime workhours in delivery operations at a time when the Postal Service is faced with increased costs while revenues decline as a result of the overall reduction in mail volumes. It is imperative, then, for the Postal Service to achieve a more balanced distribution of DSCF Standard Mail across delivery days.

The Postal Service believes that the revised service standards are designed to achieve the section 3691(b) objectives. Standard Mail should continue to retain its value to customers. The change applies only to mail entered on Fridays and Saturdays and the Postal Service will work with mailers to help them adjust to the new standards and preserve Standard Mail as an attractive and viable medium for the delivery of messages and parcels.

The DSCF Standard Mail service standard change will also help improve the Postal Service's performance in meeting service standards, by achieving a more balanced distribution of DSCF Standard Mail across delivery days.

IV. Final Revisions to Service Standards

The Postal Service's DSCF Standard Mail service standards are contained in 39 CFR part 121. The new version of 39 CFR part 121 appears at the end of this document. The following is a summary of the revisions.

Before describing how service standards will be revised, it is important to explain how service standards are structured. Service standards are comprised of two components: (1) A delivery day range within which all mail in a given product is expected to be delivered; and (2) business rules that determine, within a product's applicable day range, the specific number of delivery days after acceptance of a mail piece by which a customer can expect that piece to be delivered, based on the 3-digit ZIP Code prefixes associated with the piece's point of entry into the mail stream and its delivery address.

Business rules are based on the Critical Entry Time (CET). The CET is the latest time on a particular day that a mail piece can be entered into the postal network and still have its service standard calculated based on that day (this day is termed ''day-zero''). In other words, if a mail piece is entered before the CET, the mail piece's service standard is calculated from the day of entry, whereas if the mail piece is entered after the CET, its service standard is calculated from the following day. For example, if the applicable CET is 4:00 p.m., and a letter is entered at 3:00 p.m. on a Tuesday, its service standard will be calculated from Tuesday, whereas if the letter is entered at 5:00 p.m. on a Tuesday, its service standard will be calculated from Wednesday.

The Postal Service is revising the Standard Mail service standards for pieces that qualify for a DSCF rate and are accepted before the day zero CET at the proper DSCF on Friday or Saturday, to enable a more balanced distribution of Standard Mail volume across delivery days. For these Standard Mail pieces entered on Friday or Saturday at the DSCF rate, the Postal Service is changing the current three-day delivery expectation to a four-day delivery expectation. And for pieces entered at the SCF in San Juan, PR and destined for the U.S. Virgin Islands, as well as all DSCF entry pieces destined for American Samoa, the delivery expectation for pieces entered on Friday or Saturday changes from four days to five days.

The Postal Service has not made other revisions to its service standards in this document.

List of Subjects in 39 CFR Part 121

Market-dominant mail products, Service standards.

For the reasons set out in the preamble, 39 CFR part 121 is amended as set forth below.

PART 121—SERVICE STANDARDS FOR MARKET DOMINANT MAIL PRODUCTS

■ 1. The authority citation for 39 CFR part 121 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

■ 2. In § 121.3, revise paragraphs (b)(2) and (b)(3) to read as follows:

§ 121.3 Standard Mail.

* * * * *

(b) * * *

(2) Standard Mail pieces that qualify for a DSCF rate and that are accepted before the day-zero Critical Entry Time at the proper DSCF have a 3-day service standard when accepted on Sunday through Thursday and a 4-day service standard when accepted on Friday or Saturday, except for mail dropped at the SCF in the territory of Puerto Rico and destined to the territory of the U.S. Virgin Islands, or mail destined to American Samoa.

(3) Standard Mail pieces that qualify for a Destination Sectional Center Facility (DSCF) rate and that are accepted before the day zero Critical Entry Time at the SCF in the territory of Puerto Rico and destined for the territory of the U.S. Virgin Islands, or are destined to American Samoa, have a 4-day service standard when accepted on Sunday through Thursday and a 5-day service standard when accepted on Friday or Saturday.

* * * * *

■ 3. In Appendix A to part 121, revise Tables 5 and 6 to read as follows:

Appendix A to Part 121—Tables Depicting Service Standard Day Ranges

* * * * *

TABLE 5—DESTINATION ENTRY SERVICE STANDARD DAY RANGES FOR MAIL TO THE CONTIGUOUS 48 STATES AND THE DISTRICT OF COLUMBIA

Mail class	Contiguous United States			
	Destination entry (at appropriate facility)			
	DDU (Days)	SCF (Days)	ADC (Days)	NDC (Days)
Periodicals	1	1	1–2	1–2
Standard Mail	2	3–4	.....	5
Package Services	1	2	.....	3

TABLE 6—DESTINATION ENTRY SERVICE STANDARD DAY RANGES FOR MAIL TO NON-CONTIGUOUS STATES AND TERRITORIES

Mail class	Destination entry (at appropriate facility)									
	DDU (days)	SCF (days)			ADC (days)			NDC (days)		
		Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI	Alaska	Hawaii, Guam, & American Samoa	Puerto Rico & USVI
Periodicals	1	1–2	1	1–2	1–3 (AK)	1 (HI)	1–2	10–11	10	8–10
	.....	.....	.....	.....	11 (JNU)	2 (GU)	.....	.....	.....	.....
	.....	.....	.....	.....	11 (KTN)	.....	.....	.....	.....	.....
Standard Mail	2	3–4	3–5	3–5	.....	.....	.....	14	13	12
Package Services	1	2	2	2–3	.....	.....	.....	12	11	11

AK = Alaska 3-digit ZIP Codes 995–997; JNU = Juneau AK 3-digit ZIP Code 998; KTN = Ketchikan AK 3-digit ZIP Code 999; HI = Hawaii 3-digit ZIP Codes 967 and 968; GU = Guam 3-digit ZIP Code 969.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2014–04784 Filed 3–4–14; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2013–0698; FRL–9907–32–Region 7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the State Implementation Plan (SIP) submitted by the State of Missouri which revises the written reporting requirements for maintenance, start-up, or shutdown activities; updates the information a source operator must provide to the department when a notice of excess emissions is received; and corrects references in the reporting and record keeping section.

DATES: This final rule is effective on April 4, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2013–0698. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m. excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Amy Bhesania, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7147, or by email at *bhesania.amy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What is EPA's response to comments?
IV. What action is EPA taking?

I. What is being addressed in this document?

EPA is approving revisions to the Missouri SIP submitted to EPA on July 8, 2010 which amends 10 CSR 10–6.050 *Start-up, Shutdown, and Malfunction Conditions.* Specifically, Missouri amended subsection 3(B) to remove the option for verbal notification and therefore only written notification is allowed for any maintenance, start-up, or shutdown activity which is expected to cause an excess release of emissions that exceeds one hour. This change makes the written notification requirements consistent for subsections (3)(B) which covers maintenance, start-up and shutdown, and (3)(A) which covers malfunctions. Subparagrah (3)(B)3. was removed because the requirement was only applicable to malfunctions which is addressed in subsection (3)(A).

The remaining revisions to the rule are administrative changes which revise the rule to be consistent with the state's standard rule format or make other minor clarifying changes. Subparagraphs (3)(B)3 through (3)(B)9 were renumbered to adjust for the removal of item (3)(B)3. Subparagraph (3)(C)2 includes minor administrative changes to meet the state's standard rule

format. Subparagraphs (3)(C)2.A and (3)(C)2.B were removed because they were redundant and replaced with references to the appropriate applicable subsections of the rule. Subsection (4)(B) was revised to be consistent with the state's standard rule format.

In a separate action on February 22, 2013, EPA has proposed to address a petition by Sierra Club related to SSM provisions, including 10 CSR 10–6.050(3)(C) (78 FR 12459). In this separate action, EPA proposed to deny the petitioner's request that EPA take action under Clean Air Act (CAA) section 110(k)(5) or (6) to direct the state to revise this provision. The revisions in today's action do not address the sections of the regulation challenged by the Sierra Club in its petition. The revisions in today's action clarify and strengthen the Missouri SIP. By removing the option for oral notification in 10 CSR 10–6.050(3)(B), and requiring written notification, the Missouri SIP is more stringent. The revision in 10 CSR 10–6.050(3)(C)2.A clarifies the notification requirements for malfunctions by referring to section 10 CSR 10–6.050(3)(A). The revision in 10 CSR 10–6.050 (3)(C)2.B clarifies the general notification requirements for maintenance, startup, or shutdown activities by referring to the general notification requirements set forth in 10 CSR 10–6.050(3)(B).

The revisions in today's action are consistent with CAA requirements for SIP provisions and do not violate the anti-backsliding provisions in section 110(l) or section 193 of the CAA because they are SIP strengthening and do not interfere with any applicable requirements concerning attainment or reasonable further progress nor do they affect control measures in effect prior to the 1990 CAA Amendments related to nonattainment areas. Further, these revisions are consistent with the action proposed by EPA on February 22, 2013 as mentioned above (78 FR 12459).

II. Have the requirements for approval of a SIP revision been met?

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

III. What is EPA's response to comments?

The public comment period on EPA's proposed rule opened December 3, 2013, the date of its publication in the **Federal Register**, and closed on January 2, 2014 (78 FR 72608). During this period, EPA received no comments.

IV. What action is EPA taking?

EPA is taking final action to amend the Missouri SIP by approving the state's request to amend 10 CSR 10–6.050 *Start-Up, Shutdown, and Malfunction* to update written reporting requirements, correct references, and other minor clarifying changes. Approval of these revisions ensures consistency between state and Federally-approved rules. EPA has determined that these changes will not relax the SIP or adversely impact air emissions.

Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 13, 2014.

Mike Brinks,

Acting Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c), under Chapter 6 is amended by revising the entry for ''10–6.050'' to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.050	Start-up, Shutdown, and Malfunction Conditions.	07/30/10	03/05/14 [*insert* **Federal Register** *page number where the document begins*].	
*	*	*	*	*

[FR Doc. 2014–04779 Filed 3–4–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0941; FRL–9906–19]

Fluopicolide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for indirect or inadvertent residues of fluopicolide in or on corn, field, forage; corn, field, grain; corn, field, stover. Valent U.S.A. Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 5, 2014. Objections and requests for hearings must be received on or before May 5, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0941, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0941 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 5, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your

objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0941, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of January 16, 2013 (78 FR 3377) (FRL–9375–4), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (2F8099) by Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200; Walnut Creek, CA 94596. The petition requested that 40 CFR 180.627 be amended by establishing tolerances for indirect or inadvertent residues of the fungicide fluopicolide, 2,6-dichloro-N-[3-chloro-5-(trifluoromethyl)-2-pyridylmethyl]-benzamide, and its metabolite, 2,6-dichlorobenzamide, in or on corn, field, forage at 0.09 parts per million (ppm); corn, field, grain at 0.01 ppm; and corn, field, stover at 0.3 ppm. These tolerances are being requested for fluopicolide residues that are likely to be found in or on corn when corn is planted as a rotational crop into a field that has previously been treated with fluopicolide, not for residues that result from direct application of fluopicolide to corn. That document referenced a summary of the petition prepared by Valent U.S.A. Corporation, the registrant, which EPA failed to make available through *http://www.regulations.gov.* Subsequently, EPA posted the summary to the docket via *http://www.regulations.gov* and republished notice of the availability of Valent's summary of its petition in the docket on September 12, 2013 (78 FR 56185) (FRL–9399–7). There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerances for corn, field, forage from 0.09 ppm to 0.08 ppm; and for corn, field, stover from 0.3 ppm to 0.20 ppm. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicological database indicates that fluopicolide has relatively low acute toxicity. Fluopicolide is not a dermal sensitizer, primary eye irritant, or primary skin irritant. The subchronic and chronic toxicity studies showed that the primary effects of fluopicolide are in the liver. Kidney and thyroid toxicity were observed in rats only. Fluopicolide is not neurotoxic, carcinogenic, nor mutagenic. Developmental toxicity in the rabbit occurred only at doses that caused severe maternal toxicity (including death). In the rat, developmental effects were seen only at high dose levels (700 milligrams/kilogram/day (mg/kg/day)) in the presence of maternal toxicity. Similarly, offspring effects (decreased body weight and body weight gain) occurred only at levels causing significant toxicity in parents of the multi-generation reproductive toxicity study. There is no evidence of increased quantitative susceptibility of rat or rabbit fetuses to *in utero* or postnatal exposure to fluopicolide. No toxic effects were observed in studies in which fluopicolide was administered by the dermal routes of exposure. The toxicological profile for fluopicolide suggests that increased durations of exposure do not significantly increase the severity of observed effects. The rabbit developmental and rat chronic/cancer studies were therefore considered as potential studies for deriving risk assessment endpoints for all durations of exposure. Fluopicolide is classified as ''not likely to be carcinogenic to humans'', thus no quantification of cancer risks is required.

Fluopicolide shares a metabolite, 2,6-dichlorobenzamide (BAM), with another active ingredient, dichlobenil. Residues of BAM are considered to be of regulatory concern, and separate toxicity data and endpoints for risk assessment have been selected for BAM. Since the toxicity profile for BAM has not changed since the last assessment EPA conducted for BAM, an analysis of the toxicology profile of BAM can be found in ''Fluopicolide and its Metabolite, 2,6-Dichlorobenzamide (BAM). Amended Human Health Risk Assessment to Support New Section 3 Uses on Brassica Leafy Greens Subgroup 5B, Potatoes, Sugar Beets, Carrots and to Allow Rotation to Wheat,'' dated November 21, 2007 (''2007 BAM Risk Assessment'') in docket ID number EPA–HQ–OPP–2006–0481).

Specific information on the studies received and the nature of the adverse effects caused by fluopicolide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Fluopicolide. Human Health Risk Assessment of the new section 3 tolerance on Rotational Corn'' in docket ID number EPA–HQ–OPP–2012–0941.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies

toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for fluopicolide and BAM used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of April 20, 2011 (76 FR 22045) (FRL–8859–9).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluopicolide, EPA considered exposure under the petitioned-for tolerances as well as all existing fluopicolide tolerances in 40 CFR 180.627. EPA did not consider additional exposures from BAM since the proposed change in use pattern does not add significantly to the BAM dietary exposure, and residues of BAM due to fluopicolide applications are significantly lower than those from dichlobenil applications. EPA is relying on conclusions from the 2007 BAM Risk Assessment. These conclusions remain unchanged and a revised quantitative BAM risk assessment was not conducted to support the proposed tolerances. EPA assessed dietary exposures from fluopicolide in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were identified in the toxicological studies for fluopicolide; therefore, a quantitative acute dietary exposure assessment is unnecessary.

Acute effects were identified for BAM, and a conservative acute dietary exposure assessment for BAM was conducted. Maximum residues of BAM from fluopicolide field trials on tuberous and corm vegetables, leafy vegetables (except brassica), fruiting vegetables, cucurbit vegetables, grapes (domestic and imported), (except potato), and from dichlobenil field trials on food commodities with established/pending tolerances (40 CFR 180.231) were included in the assessments. The assessments used 100 percent crop treated (PCT) except for apples, blueberries, cherries, cranberries, peaches, pears, and raspberries.

ii. *Chronic exposure.* A chronic aggregate dietary (food and drinking water) exposure and risk assessment was conducted for fluopicolide using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16. This software uses 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA assumed 100 PCT and tolerance-level residues.

A conservative chronic dietary exposure assessment for BAM was conducted as described in Unit III.C.1.i. for the acute assessment.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluopicolide does not pose a cancer risk to humans. Therefore, a quantitative dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

The carcinogenic potential of BAM has been evaluated in only one species, the rat. That study showed an increased incidence of hepatocellular adenomas in high-dose females that was marginally statistically significant. In its previous BAM assessment, EPA assumed that BAM's potential for carcinogenicity is similar to the parent having the greatest carcinogenic potential, specifically, dichlobenil, which has been classified as ''Group C, possible human carcinogen'' and for which EPA used a reference dose (RfD) approach for quantification of human cancer risk. Accordingly, EPA has assessed BAM's cancer risk by using an RfD approach. For this assessment, EPA relied on BAM chronic exposure assessment as described in Unit III.C.1.ii.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for fluopicolide. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

EPA used anticipated residues and PCT information for the acute and chronic dietary risk assessments for BAM. For further analysis and EPA's findings under section 408(b)(2)(E) of the FFDCA, see Unit III.C.1.iv. of the preamble to the fluopicolide final rule published in the **Federal Register** of April 20, 2011 (76 FR 22045, 22050) (FRL–8859–9).

2. *Dietary exposure from drinking water.* A new drinking water assessment was not necessary for the establishment of tolerances resulting from inadvertent residues of fluopicolide on rotational corn. Previously, the Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluopicolide in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluopicolide. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the surface water concentrations estimated using the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS); and Screening Concentrations in Ground Water (SCI–GROW) models, the estimated environmental concentrations (EECs) of fluopicolide for chronic exposures (non-cancer) assessments are estimated to be 24.14 ppb for surface water and 0.5 ppb for ground water. Acute and cancer dietary risks were not quantified, as previously discussed.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the chronic dietary risk assessment, the water concentration of value 24.14 ppb was used to assess the contribution to drinking water.

Considering residues of BAM in drinking water from uses of dichlobenil and fluopicolide, the uses on dichlobenil will result in the highest residues in drinking water. Therefore, the results from dichlobenil (from the use of nutsedge at 10 lb dichlobenil active ingredient/Acre (ai)/(A)) were used in the 2007 BAM Risk Assessment, *i.e.,* 56.2 ppb was used as the value of BAM residues in drinking water in the dietary assessment for both the acute and chronic assessment.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Fluopicolide is currently registered for the following uses that could result in short-term residential exposures: Residential turf grass, recreational sites and ornamental plants. EPA assessed residential exposure using the following assumptions: Residential handlers may receive short-term dermal and inhalation exposure to fluopicolide when mixing, loading, and applying the formulations. Residential post-application exposure via the dermal route is likely for adults and children entering treated lawns or treated gardens and during mowing and golfing activities. Children may also experience exposure via incidental non-dietary ingestion (*i.e.,* hand-to-mouth, object-to-mouth (turfgrass), and soil ingestion) during post-application activities on treated turf. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

BAM is a metabolite/degradate which forms slowly; therefore, the scenarios were assessed in the previous assessment assuming that BAM is present at levels which reflect high end measurements observed in the longer-term metabolism studies in order to provide a protective assessment. The short-/intermediate-term dermal MOEs for adults and children are 10,000 and 6,000, respectively, and the combined incidental oral MOE for toddlers is 62,000. These MOEs are greater than the LOC of 100 for dermal exposure and 1,000 for incidental oral exposure, on the day of application, and therefore, are not of concern. See 2007 BAM Risk Assessment.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to fluopicolide and any other substances. Although fluopicolide shares a common metabolite, BAM, with dichlobenil, quantification of risks for residues of BAM resulting from fluopicolide was not done as part of this assessment because they contribute an insignificant amount to the total BAM exposure. Furthermore, aggregate risks to BAM are not of concern. For the purposes of this tolerance action, EPA has not assumed that fluopicolide has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's Web site at: *http://www.epa.gov/pesticides/cumulative/.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* For fluopicolide, there is no evidence of quantitative susceptibility following *in utero* and/or postnatal exposure in the rabbit and rat developmental toxicity studies or in the 2-generation rat reproduction study. Qualitative susceptibility was observed in the rat developmental toxicity study. Fetal effects (reduced growth and skeletal defects) and late-term abortions were observed at doses at which only decreased body weight gain were observed in maternal animals. There is low concern for this qualitative susceptibility, because the fetal effects and late-term abortions have been well characterized and only occurred at a dose level near the limit dose. Protection of the maternal effects also protects for any effects that may occur during development. There are no residual uncertainties concerning prenatal and postnatal toxicity for fluopicolide.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluopicolide is complete.

ii. There is no indication that fluopicolide is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. As discussed in Unit III.D.2. in this document, the degree of concern for the prenatal and/or postnatal toxicity is low; thus, there is no need for the 10X FQPA safety factor to account for potential prenatal or post-natal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluopicolide in drinking water. Although EPA has required additional data on transferable residues from treated turf for fluopicolide, EPA is confident that it has not underestimated turf exposure due to the conservativeness of the default turf transfer value and conservative assumptions in the short-term turf assessment procedures (e.g., assuming residues do not degrade over the thirty day assessment period and assuming high-end activities on turf for every day of the assessment period).

For reasons explained in III.D. of the preamble to the fluopicolide final rule published in the **Federal Register** of April 20, 2011 (76 FR 22045) (FRL–8859–9), EPA reduced the FQPA safety factor for BAM to 1X for inhalation and dermal exposure scenarios and retained the 10X FQPA safety factor for all other BAM exposure scenarios. EPA is relying on the findings in the preamble of the April 20, 2011 final rule and the 2007 BAM Risk Assessment for the BAM FQPA safety factor determinations for this action.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-,

intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fluopicolide is not expected to pose an acute risk.

The acute dietary exposure estimates for BAM at the 99.9th percentile of the exposure distribution are 11% of the aPAD for the general U.S. population and 28% aPAD for all infants 1 year old, the most highly exposed group.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluopicolide from food and water will utilize 12% of the cPAD for children 1–2 years of age, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluopicolide is not expected.

The chronic dietary exposure estimates for BAM are 29% of the chronic cPAD for the general U.S. population and 93% cPAD for all infants (< 1 year old), the most highly exposed group, which is not of concern to the Agency.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Fluopicolide is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluopicolide.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 110 for adult males and females and 183 for children 6–11 years of age. Because EPA's level of concern for fluopicolide is a MOE of 100 or below, these MOEs are not of concern.

Short-term exposures for fluopicolide's metabolite BAM, may occur as a result of activities on treated turf. Incidental oral exposures related to turf activities have been combined with chronic dietary exposure estimates to assess short-term aggregate exposure for BAM. Since aggregate MOEs for BAM are greater than the LOC, they represent risk estimates that are below the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Intermediate-term exposures are not likely because of the intermittent nature of applications by homeowners.

5. *Aggregate cancer risk for U.S. population.* As noted in Unit III.A., EPA has determined that fluopicolide is ''not likely to be carcinogenic to humans.'' As discussed in Unit III.C., EPA assessed the BAM cancer risk using an RfD approach. Relying on the BAM chronic risk assessment, EPA determines that BAM does not pose a cancer risk. Therefore, fluopicolide is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to fluopicolide residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (Liquid Chromatography/Tandum Mass Spectrometry (LC/MS/MS) method) is available to enforce the tolerance expression.

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

B. International Residue Limits

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

The Codex has not established MRLs for fluopicolide on corn, field, forage; corn, field, grain or corn, field, stover.

C. Revisions to Petitioned-For Tolerances

The established tolerance levels for field corn forage and field corn stover differ from the petition. The petitioner's calculations were based on the sum of fluopicolide and BAM. Since the tolerance expression includes monitoring of residues of fluopicolide only for rotational crops for both food and feed commodities, it is not appropriate to consider residues of BAM in tolerance calculations. Therefore, EPA is establishing tolerances based on field trial data for fluopicolide only and using the Organization of Economic Cooperation and Development (OECD) calculation procedure.

V. Conclusion

Therefore, tolerances are established for residues of fluopicolide, 2,6-dichloro-N-[3-chloro-5-(trifluoromethyl)-2-pyridylmethyl]-benzamide, in or on corn, field, forage at 0.08 ppm; corn, field, grain at 0.01 ppm; and corn, field, stover at 0.20 ppm.

VI. Statutory and Executive Order Reviews

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

Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 26, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.627, in paragraph (d), add alphabetically the following commodities to the table to read as follows:

§ 180.627 Fluopicolide; tolerances for residues.

* * * * *

(d) * * *

Commodity	Parts per million
Corn, field, forage	0.08
Corn, field, grain	0.01
Corn, field, stover	0.20

* * * * *

[FR Doc. 2014–04832 Filed 3–4–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0949; FRL–9906–47]

Triflumizole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of triflumizole in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 5, 2014. Objections and requests for hearings must be received on or before May 5, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0949, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0949 in the subject line on

the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 5, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0949, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of February 15, 2013 (78 FR 11126) (FRL–9378–4), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E8119) by IR–4, 500 College Road East, Suite 201W., Princeton, NJ 08540. The petition requested that 40 CFR 180.476 be amended by establishing tolerances for residues of the fungicide triflumizole, 1-[1-((4-chloro-2-(trifluoromethyl) phenyl)imino)-2propoxyethyl]-1*H*-imidazole, in or on berry, low growing, subgroup 13–07G at 2.0 parts per million (ppm); fruit, pome, group 11–10 at 0.5 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.5 ppm; and tomato at 1.5 ppm. That document referenced a summary of the petition prepared by Chemtura, the registrant, which is available in the docket, *http://www.regulations.gov.* A comment was received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

In the **Federal Register** of October 25, 2013 (78 FR 63938) (FRL–9901–96), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), which amended the notice of filing published on February 15, 2013, for the pesticide petition (PP 2E8119) submitted by IR–4, 500 College Road East, Suite 201W., Princeton, NJ 08540. The modified petition requested that 40 CFR 180.476 be amended by establishing tolerances for residues of the fungicide triflumizole, 1-[1-((4-chloro-2-(trifluoromethyl) phenyl)imino)-2propoxyethyl]-1*H*-imidazole, in or on berry, low growing, subgroup, 13–07G at 2.0 ppm; fruit, pome, group 11–10 at 0.5 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.5 ppm; and tomato at 1.5 ppm. The petition also requested that EPA amend the existing tolerance by modifying the vegetable, cucurbit, group 9 tolerance from 0.5 ppm to 0.8 ppm and, upon approval of the tolerances stated in this paragraph, by removing established tolerances for apple at 0.5 ppm; grape at 2.5 ppm; pear at 0.5 ppm; and strawberry at 2.0 ppm.

Based upon review of the data supporting the petition summarized in the Notices of Filing, EPA has modified the tolerance level needed for the cucurbit vegetable group 9. The reason for this change is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The liver is the primary target organ of triflumizole. Liver effects were seen in rat and mouse subchronic and chronic/carcinogenicity studies. Subchronic effects included increased absolute and relative liver weights, accumulation of fat droplets, and slight hepatocyte centrilobular swelling. With increased length of exposure, the types of microscopic lesions noted increased in number and severity. Chronic effects included hepatocyte fatty vacuolization; hepatocyte hypertrophy, focal inflammation, and necrosis; fatty degeneration; eosinophilic foci of hepatocyte alteration; hepatic nodules; bile duct hyperplasia; and hyaline degeneration/fibrosis of the bile duct. The dog was less sensitive to the effects of triflumizole. In the dog chronic study, effects included increased liver weights, increased serum alkaline phosphatase levels, and a macroscopic hepatic lobular pattern and granular texture. A very mild, macrocytic anemia was also noted and was most likely secondary to liver effects.

Triflumizole is classified as not likely to be carcinogenic to humans, based on a weight of evidence determination including the lack of evidence of carcinogenicity in studies in rats and mice and the absence of a mutagenicity concern.

The oral rat developmental study showed an increased qualitative susceptibility of the fetus to triflumizole *in utero.* Decreased numbers of viable fetuses, increased dead or resorbed fetuses, increased numbers of late resorptions, decreased fetal body weight and increased incidences of cervical ribs was seen in the fetuses at the same doses at which maternal toxic effects were noted. In addition, increased incidences of 14th rudimentary ribs were observed at the next highest dose.

Maternal toxic effects in the rat were decreased body weight gain and decreased food consumption, increased placental weight, and increased maternal spleen and liver weights.

No increased susceptibility of the fetus was noted *in utero* in the rabbit developmental study. Fetal effects included increased fetal and litter incidences of lumbar ribs and decreased placental weights, which was also included as a maternal toxic effect. Maternal toxic effects in the rabbit included decreased body weight gain, decreased food consumption, and decreased placental weights.

In the 3-generation reproductive toxicity study in the rat, offspring effects included decreased pup weights, survival indices, and litter sizes in both F_3 litters, reduced litter size in the F_{1a} litter, increased total-litter mortality in the F_{3a} litter, and developmental effects in the F_{1b} and F_{2b} progeny. Reproductive toxicity, manifested as increased gestation length, was increased in the F_0 dams which were pregnant with F_1 offspring. Increased gestation length can be due to either effect in the dams and/or the offspring, and this alteration in normal reproductive function can result in adverse consequences in both dams and offspring. Accordingly, there is no increased quantitative susceptibility of the fetus. There is increased qualitative susceptibility in pups; however, a clear no-observed-adverse-effect-level (NOAEL) for this effect was established for these effects, and risk assessment endpoints and points of departures (PODs) were selected which are protective for these effects.

In acute oral toxicity studies in the rat and mouse and an acute inhalation study in the rat, animals developed neurotoxic signs within 30 to 60 minutes of administration, which resolved within 24 hours in surviving animals. Signs included ataxia, hypotonia, ventral positioning, urinary incontinence, decreased respiration and heart rates, decreased locomotor movement, lacrimation, salivation, ptosis, and/or rhinorrhea. No treatment-related histopathological effects were found in surviving animals. In the chronic rat study, convulsions were observed sporadically in all dosage groups, but the incidences were significantly higher in the high-dose females. The majority of the convulsions were noted within the first year. Cholinesterase activity was also affected during the first year of the study, but not in a consistent manner. High-dose males had decreased plasma and erythrocyte cholinesterase activity while high-dose females had decreased plasma cholinesterase activity only. There were no treatment-related effects on cholinesterase activity in the brain in either sex at any dose and no neuropathology was noted. No neurotoxic effects were observed in the rat subchronic oral toxicity study or the mouse subchronic oral toxicity and carcinogenicity studies.

The evidence does not support the need for a developmental neurotoxicity (DNT) study. This conclusion is supported by lack of neurotoxic signs noted in the rat subchronic study at any dose, and in the adult or offspring in the developmental and reproductive toxicity studies in the rat. In an immunotoxicity dietary study in female Bagg Albino (BALB/c) mice, a significant decrease in the anti-sheep red blood cells immunoglobulin M (anti-SRBC IgM) response was observed at a dose level of 285.7 milligrams/kilograms/day (mg/kg/day). The NOAEL was 28.6 mg/kg/day. The results of the immunotoxicity study do not impact the PODs selected for dietary and non-dietary exposure risk assessments.

Specific information on the studies received and the nature of the adverse effects caused by triflumizole as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document entitled ''Triflumizole: Human-Health Risk Assessment for the Proposed Uses on Greenhouse-Grown Tomato and Cucumber; Pome Fruit Group 11–10, Small Fruit Vine Climbing except Fuzzy Kiwifruit Subgroup 13–07F and Low Growing Berry Subgroup 13–07G, Except Cranberry'' on pp. 33–36 in docket ID number EPA–HQ–OPP–2012–0949.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological PODs and levels of concern (LOCs) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors (UF) are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for triflumizole used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TRIFLUMIZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age).	NOAEL = 10 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.1 mg/kg/day. aPAD = 0.1 mg/kg/day	Developmental Toxicity Study—Rat. Developmental LOAEL = 35 mg/kg/day based on decreased numbers of viable fetuses, increased dead or resorbed fetuses, increased numbers of late resorptions, decreased fetal body weight, and increased incidences of cervical ribs.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TRIFLUMIZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	NOAEL = 25 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.25 mg/kg/day. aPAD = 0.25 mg/kg/day	Acute Neurotoxicity Study—Rat. LOAEL = 100 mg/kg/day based on FOB findings (neuromuscular impairment) and decreased locomotor activity.
Chronic dietary (All populations)	LOAEL = 3.5 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 3x UF_L	Chronic RfD = 0.012 mg/kg/day. cPAD = 0.012 mg/kg/day.	Combined Chronic. Toxicity/Carcinogenicity Study—Rat. Based on liver toxicity (eosinophilic foci in male rats and fatty vacuolation and inflammation and necrosis in female rats).
Dermal short-term (1 to 30 days).	Dermal (or oral) study NOAEL = 3.5 mg/kg/day (dermal absorption rate = 3.5%. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Multi-generation Reproduction Study—Rat. LOAEL = 8.5 mg/kg/day based on decreased pup body weight, mortality, reduced litter size, and increased incidence of hydroureter and space between the body wall and organs were observed at 8.5 mg/kg/day. In addition, gestation length was increased in the dams of F_{1a}, F_{2a}, and F_{3a} intervals at the LOAEL of 8.5 mg/kg/day.
Inhalation short-term (1 to 30 days).	Oral study NOAEL = 3.5 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Multi-generation Reproduction Study—Rat. LOAEL = 8.5 mg/kg/day based on decreased pup body weight, mortality, reduced litter size, and increased incidence of hydroureter and space between the body wall and organs were observed at 8.5 mg/kg/day. In addition, gestation length was increased in the dams of F_{1a}, F_{2a}, and F_{3a} intervals at the LOAEL of 8.5 mg/kg/day.
Cancer (Oral, dermal, inhalation).	Classification: ''Not likely to be Carcinogenic to Humans'' based a weight of evidence determination including the lack of evidence of carcinogenicity in studies in rats and mice and the absence of a mutagenicity concern.		

FOB = functional observational battery. FQPA SF = Food Quality Protection Act Safety Factor.
LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to triflumizole, EPA considered exposure under the petitioned-for tolerances as well as all existing triflumizole tolerances in 40 CFR 180.476. EPA assessed dietary exposures from triflumizole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for triflumizole and as noted in Table 1of this unit, separate acute endpoints and PODs were selected for females of child-bearing age (13–49) and the general population including infants and children. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). A conservative acute dietary assessment was conducted using tolerance-level residues, and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA's NHANES/WWEIA. As to residue levels in food, a partially refined chronic dietary assessment was conducted using average residues from supervised field trials, and PCT estimates for currently registered commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that triflumizole does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.

• Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

Apple: 25%; cantaloupe: 10%; cherry: 25%; cucumber: 2.5%; filbert: 5%; grape: 5%; honeydew: 15%; pear: 45%; pumpkin: 5%; squash: 5%; strawberry: 25%; and watermelon: 5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which triflumizole may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for triflumizole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of triflumizole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of triflumizole for acute exposures are estimated to be 98 parts per billion (ppb) for surface water and 3.1 ppb for ground water and for chronic exposures are estimated to be 22 ppb for surface water and 3.1 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 98 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 22 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Triflumizole is currently registered for the following uses that could result in residential exposures: As a foliar spray by home owner and commercial applicators to landscape grown trees, shrubs, and vines and also for use on residential/non-commercially grown trees/vines bearing apples, pears and grapes.

EPA assessed residential exposure using the following assumptions: For residential handlers, short-term dermal and inhalation exposures are expected for triflumizole activities associated with use on ornamental plants and bearing pome fruit trees. The dermal and inhalation endpoints are based on the same toxicological effect for triflumizole, and therefore the MOEs were combined to determine a total risk estimates. For post-application, there is the potential for short-term dermal exposure for adults and children (6–11 years old), exposed as a result of being in an environment that has been previously treated with triflumizole on landscape ornamentals. Post-application exposure from triflumizole use on landscape ornamentals for children (1–2 years) is expected to be negligible based on the following factors:

• Children young enough to exhibit hand-to-mouth behavior would not typically play in ornamental beds or tree plots.

• If present, leaf to skin residue transfer would be negligible because of the minimal frequency and duration of contact.

The residential handler exposure for adults from the back pack sprayer broadcast use of triflumizole to gardens and trees represents the highest estimated risk, and was therefore combined with the chronic dietary exposure for adults (general U.S. population), to estimate the highest aggregate exposure and risk.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found triflumizole to share a common mechanism of toxicity with any other substances, and triflumizole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that triflumizole does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of

safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is evidence of increased qualitative susceptibility following *in utero* exposure to rats in a developmental study. Developmental toxicity resulted in fetal death as compared to maternal toxicity which included decreases in body weight gain and food consumption and increases in placental, spleen, and liver weights.

No quantitative or qualitative evidence of increased susceptibility was seen following *in utero* exposure to rabbits in a developmental study. In the developmental rabbit study, a cesarean section was performed with evaluation of 24-hour fetal survival. At this interval, fetal survival was decreased. EPA does not consider this finding to indicate an adverse effect because a cesarean section with 24-hour fetal survival is more an indicator of fetal endurance after being removed from the womb than a measurement of treatment-related effects on fetal viability and, thus, is not appropriate to use to ascertain fetal susceptibility. For similar reasons, such an endpoint survival is not a standard measurement in the guideline developmental toxicity protocols. In addition, the decreased 24-hour fetal survival occurred in isolation and only at a high dose level (100 mg/kg/day) which is 10-fold higher than the NOAEL of 10 mg/kg/day selected for the acute dietary (females 13–49 years of age) exposure scenario for which this endpoint might be pertinent. Further, the 24-hour fetal survival was not replicated in a second developmental rabbit guideline study.

Evidence of increased qualitative susceptibility in pups was evident in the 3-generation reproductive toxicity study in the rat; however, the use of the NOAEL of 3.5 mg/kg/day (offspring and reproductive effects) for incidental oral scenarios and short-term dermal and inhalation scenarios is protective of potential toxicity (observed in the developmental and 2-generation reproductive toxicity studies) following pre- and postnatal exposures.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF for the acute risk assessment, and short-term dermal and inhalation exposure scenarios is removed (1X), and for chronic risk assessment is reduced to 3X. A 3X FQPA SF is retained for the chronic RfD because it is derived from the use of a LOAEL established in the combined chronic toxicity/carcinogenicity study in rats. A 3X rather than a 10X is adequate for the FQPA SF for the reasons provided below:

- For this chemical, the liver is the most sensitive target organ and the histopathological lesions seen in the target organ is used as the endpoint of concern.
- The Agency is confident that the extrapolated NOAEL of 1.2 mg/kg/day (LOAEL of 3.5 mg/kg/day ÷ 3 UF_L (use of a LOAEL to extrapolate a NOAEL) = 1.2 mg/kg/day) would be protective of liver effects in this species because the observed liver effects were minimal in severity and did not progress into malignancy (i.e., no liver tumors were seen) even after 2 years of treatment in either sex of rats.
- Retention of the 3X UF_L results in an extrapolated NOAEL of 1.2 mg/kg/day (LOAEL 3.5 mg/kg/day ÷ 3 UF_L= 1.2 mg/kg/day). This value, at a minimum, is approximately 10-fold lower than all the NOAELs established in the database with the other studies as shown in this unit.

The FQPA SF provides adequate protection of infants and children based on the following findings:

i. The toxicity database for triflumizole is complete. Although no subchronic inhalation data is available EPA has waived that data requirement. In determining the need for a subchronic inhalation study, EPA's weight of evidence decision process included both hazard and exposure considerations as well as incorporation of a presumed 10X Database Uncertainty Factor (UFdb) for the lack of this study. Specifically, with regard to exposure considerations, the Agency's LOC in the evaluating the need for the subchronic inhalation study is a MOE of 1,000 for inhalation exposure, which includes the 10X inter-species extrapolation factor, 10X intra-species variation factor, and the 10X UFdb. For trifumizole, residential inhalation exposures resulted in MOEs higher than the LOC of 1,000 when using an oral POD. This indicates that the lack of an inhalation study does not reduce the overall confidence in the risk assessment or result in an uncertainty (i.e., the study will not provide a POD sufficiently low to result in a risk of concern). Because EPA's decision to waive the subchronic inhalation study essentially incorporates an additional 10X UFdb (i.e., the study was only waived because risks were at least 10X lower than required by use of the inter- and intraspecies safety factors), a second additional 10X FQPA SF is not being retained for the protection of infants and children due to the absence of this study.

ii. Signs of neurotoxicity were seen in the acute oral and inhalation studies in the rat and mouse. Signs of neurotoxicity (neuromuscular impairment and decreased locomotor activity) were noted in the acute neurotoxicity study at mid and high doses. As a result, the endpoint from this study was used to assess acute dietary risks from one-day exposures to triflumizole in the diet of the general population. There were no treatment-related neuropathological findings observed in either sex in the acute neurotoxicity study. No evidence of neurotoxicity was seen in the submitted subchronic neurotoxicity study. Likewise, neuropathological evaluation of study animals in the subchronic neurotoxicity study did not reveal any treatment-related histological effects of the central and peripheral nervous systems. A DNT study is not required based on the lack of neurotoxicity in the rat subchronic neurotoxicity study, and in the adult or offspring in the developmental and reproductive toxicity studies in the rat.

iii. As noted in Unit III.D.2., there is evidence of increased qualitative susceptibility following *in utero* exposure to rats in a developmental study and pre- and or postnatal exposure in a 3-generation reproductive toxicity study in the rat; however, there are no residual uncertainties, and the use of associated RfDs will be protective of the pre- and postnatal toxicity following an acute dietary exposure, and short-term dermal and inhalation exposures.

No quantitative or qualitative evidence of increased susceptibility was seen following *in utero* exposure to rabbits in a developmental study.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessment utilizes tolerance-level residues, Dietary Exsposure Evaluation Model (DEEM 7.81) default processing factors (where available), and 100 PCT information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated. The chronic dietary

food exposure assessment utilizes average field trial residues, and percent crop treated information for established tolerances. Some empirical processing factors were used in the chronic assessment along with DEEM 7.81 default processing factors (where available). The chronic assessment is partially refined; however, since it is based on reliable, high-end data, it will not underestimate exposure/risk.

EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to triflumizole in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children 6–11 years old and expects post application exposure for children below 6 years to be negligible. These assessments will not underestimate the exposure and risks posed by triflumizole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, EPA performed separate acute risk assessments for females 13 to 49 years old and for the general population, including infants and children, based on different endpoints and aPADs. For females aged 13–49, acute dietary exposure to triflumizole from food and water will occupy 66% of the aPAD chosen for that population subgroup. For the general population and population subgroups other than females aged 13–49, acute dietary exposure to triflumizole is greatest for children 1–2 years old. That subgroup will occupy 40% of the applicable aPAD.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to triflumizole from food and water will utilize 39% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of triflumizole is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Triflumizole is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to triflumizole.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined worst case scenario (adult handlers) for short-term food, water, and residential exposures result in an aggregate MOE of 180 and an aggregate MOE of 600 for children 6–11 years old. Because EPA's LOC for triflumizole is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, triflumizole is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for triflumizole.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, triflumizole is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to triflumizole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with nitrogen phosphorous detector (GC/NPD); Method I in PAM Vol. II) is available to enforce the tolerance expression.

B. International Residue Limits

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

The Codex has not established any MRLs for triflumizole.

C. Response to Comments

A comment was received that opposed the establishment of these tolerances. Part of the comment opposed the manufacturing and selling of this product due to potential effects on the environment. This is considered irrelevant because the safety standard for approving tolerances under FFDCA section 408 focuses on potential harms to human health and does not permit consideration of effects on the environment. Another part objected to the proposed tolerances because of the amounts of pesticides/toxic chemicals already consumed and carried by the American population. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, under the existing legal framework provided by FFDCA section 408 EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute.

D. Revisions to Petitioned-For Tolerances

Using the Organization for Economic Co-operation and Development (OECD) tolerance calculation procedures, it was initially determined that the existing cucurbit vegetable group 9 tolerance of 0.5 should be increased to 0.8 ppm. However, if the crop group 9 tolerance

was to be increased to 0.8 ppm, the U.S. tolerance will be higher than the Canadian MRL of 0.5 ppm. After re-examining the residue data, EPA is confident that the 0.5 ppm level will be high enough to cover residues from maximum use under the pesticide registration, and therefore, in order to remain aligned with Canada, the existing cucurbit vegetable group 9 tolerance will remain at 0.5 ppm.

V. Conclusion

Therefore, tolerances are established for residues of triflumizole, 1-[1-((4-chloro-2-(trifluoromethyl) phenyl)imino)-2propoxyethyl]-1*H*-imidazole, in or on berry, low growing, subgroup 13–07G at 2.0 ppm; fruit, pome, group 11–10 at 0.5 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.5 ppm; and. tomato at 1.5 ppm. In addition, due to the establishment of these tolerances, the existing tolerances for apple, pear, grape, and strawberry are removed as unnecessary.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 25, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.476:

■ a. Remove the commodities ''Apple,'' ''Grape,'' ''Pear,'' and ''Strawberry'' from the table in paragraph (a)(1).

■ b. Add alphabetically the following commodities to the table in paragraph (a)(1).

The amendments read as follows:

§ 180.476 Triflumizole; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
* * * * *	
Berry, low growing, subgroup 13–07G, except cranberry	2.0
* * * * *	
Fruit, pome, group 11–10	0.50
Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F	2.5
* * * * *	
Tomato	1.5
* * * * *	

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[FR Doc. 2014–04862 Filed 3–4–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0656; FRL–9906–13]

Metconazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the current tolerances for residues of metconazole in or on corn, field, stover and corn, pop, stover. BASF Corporation, requested these tolerance amendments under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective March 5, 2014. Objections and requests for hearings must be received on or before May 5, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0656, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0656 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before May 5, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0656, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 25, 2013 (78 FR 63938) (FRL–9901–96), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F8157) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, RTP, NC 27709–3528. The petition requested that 40 CFR 180.617 be amended by increasing tolerances for residues of the fungicide metconazole, in or on corn, field, stover from 4.5 parts per million (ppm) to 30.0 ppm and corn, pop, stover from 4.5 ppm to 30.0 ppm. That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.*

There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for metconazole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with metconazole follows. Specific information on the studies received and the nature of the effects caused by metconazole can be found in *www.regulations.gov,* under docket ID number EPA–HQ–OPP–2013–0656–0004, entitled ''Metconazole. Additional Residue Data on Corn Stover. Summary of Residue Data and within the memo entitled ''Metconazole. Summary of Risk Issues Associated with Increase in Tolerance for Corn Stover'', under docket ID number EPA–HQ–OPP–2013–0656–0005.

To demonstrate the safety of the increases in these corn stover tolerances, EPA is relying on its most recent tolerance action on metconazole published in the **Federal Register** on August 17, 2011 (76 FR 50898) (FRL–8882–7). See also 74 FR 21260, FRL–8408–6 (May 7, 2009) (initially establishing the corn stover tolerances). In the 2011 tolerance action, EPA concluded that aggregate exposure to metconazole is safe assuming all treated commodities, including both human and animal foods, had metconazole residues at the tolerance level. Because

EPA assessed metconazole exposure assuming tolerance level residues—a level that is set above the level of residues expected from legal use of a pesticide—unless tolerance levels on human foods increase, the 2011 action remains an up-to-date assessment of metconazole risk.

Corn stover is an animal feed. Thus, humans are only exposed to metconazole on animal feed as a result of consuming meat, milk, or egg products from livestock that have eaten commodities containing metconazole residues. After examining the impact of the proposed increase on corn stover tolerances on residue levels in meat, milk, and eggs, EPA has concluded that any residue increases in meat, milk, and eggs will be minor (principally due to the minor role that corn stover plays in the livestock diet), and thus meat, milk, and egg tolerances will not need to be increased. In other words, EPA determined that the proposed increase in tolerance levels in corn stover will not result in metconazole residues exceeding the existing meat, milk, and egg tolerances.

Accordingly, because EPA in the 2011 metconazole action assumed tolerance level residues in meat, milk, and eggs in assessing metconazole risk, and the proposed increase in the corn stover tolerances will not necessitate an increase in those tolerances, the 2011 determination of safety applies with equal force to this action. For these reasons, and in reliance on the findings in the August 17, 2011 and May 7, 2009 **Federal Register** actions, EPA concludes that there is reasonable certainty that no harm will result to the general population, and to infants and children, from aggregate exposure to metconazole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

An adequate high performance liquid chromatography method with tandem mass spectrometry (Method D0604), entitled ''The Determination of Residues of BAS 555 F and its Metabolites in Corn and Cotton Matrices Using LC/MS/MS''), with the German multi-residue method DFG S19 as a confirmatory method, is adequate as an enforcement method. Method D0604 determines metconazole (cis- and trans-isomers), 1,2,4-triazole (T), triazolyalanine (TA), and triazolylacetic acid (TAA). DFG S19 uses gas chromatography/nitrogen phosphorus detection (GC/NPD) or gas chromatography/mass spectrometric detection (GC/MS). The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established a MRL for metconazole on corn, field, stover and corn, pop, stover.

V. Conclusion

Therefore, tolerances are established for residues of metconazole, measured as the sum of cis- and trans- isomers, in or on corn, field, stover at 30 ppm and corn, pop, stover at 30 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 24, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.617, paragraph (a), revise the following entries in the table to read as follows:

§ 180.617 Metconazole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Corn, field, stover	30
* * * * *	
Corn, pop, stover	30
* * * * *	

* * * * *

[FR Doc. 2014–04865 Filed 3–4–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120404257–3325–02]

RIN 0648–XD118

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2014 Commercial Accountability Measure and Closure for South Atlantic Golden Tilefish Longline Component

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures for the commercial longline component for golden tilefish in the exclusive economic zone (EEZ) of the South Atlantic. Commercial longline landings for golden tilefish, as estimated by the Science and Research Director (SRD), are projected to reach the longline component's commercial annual catch limit (ACL) on March 5, 2014. Therefore, NMFS closes the commercial longline component for golden tilefish in the South Atlantic EEZ on March 5, 2014, and it will remain closed until the start of the next fishing season, January 1, 2015. This closure is necessary to protect the golden tilefish resource.

DATES: This rule is effective 12:01 a.m., local time, March 5, 2014, until 12:01 a.m., local time, January 1, 2015.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, telephone: 727–824–5305, email: *Catherine.Hayslip@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

On April 23, 2013, NMFS published a final rule for Amendment 18B to the FMP (78 FR 23858). Amendment 18B to the FMP established a longline endorsement program for the commercial golden tilefish component of the snapper-grouper fishery and allocated the commercial golden tilefish ACL among two gear groups, the longline and hook-and-line components.

The commercial ACL (commercial quota) for the longline component for golden tilefish in the South Atlantic is 405,971 lb (184,145 kg), gutted weight, for the current fishing year, January 1 through December 31, 2014, as specified in 50 CFR 622.190(a)(2)(iii).

Under 50 CFR 622.193(a)(1)(ii), NMFS is required to close the commercial longline component for golden tilefish when the longline component's commercial ACL (commercial quota) has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. After the commercial ACL for the longline component is reached or projected to be reached, golden tilefish may not be fished for or possessed by a vessel with a golden tilefish longline endorsement. NMFS has determined that the commercial ACL (commercial quota) for the longline component for golden tilefish in the South Atlantic will have been reached by March 5, 2014. Accordingly, the commercial longline component for South Atlantic golden tilefish is closed effective 12:01 a.m., local time, March 5, 2014, until 12:01 a.m., local time, January 1, 2015.

During the commercial longline closure, golden tilefish may still be harvested commercially using hook-and-line gear. However, vessels with golden tilefish longline endorsements are not eligible to fish for golden tilefish using hook-and-line gear under the hook-and-line trip limit, as specified in 50 CFR 622.191(a)(2)(ii). The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper and a valid commercial longline endorsement for golden tilefish having golden tilefish onboard must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m., local time, March 5, 2014.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic golden tilefish and is consistent with the Magnuson-Stevens Act, the FMP, and other applicable laws.

This action is taken under 50 CFR 622.193(a)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best available scientific information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial longline component for golden tilefish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect golden tilefish since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL (commercial quota) for the longline component. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL (commercial quota) for the longline component.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: February 28, 2014.

James P. Burgess,

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

[FR Doc. 2014–04858 Filed 2–28–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130528511–4171–03]

RIN 0648–BD31

Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Commercial, Limited Entry Pacific Coast Groundfish Fishery; Program Improvement and Enhancement; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This action contains two corrections to the limited entry Pacific coast groundfish fishery's Program Improvement and Enhancement (PIE 2) regulations that published in the **Federal Register** on November 15, 2013. This document adds a Vessel Limit table that was inadvertently deleted and revises a section to replace language that was inadvertently removed by the Pacific coast groundfish fishery's Cost Recovery final rule that published December 11, 2013.

DATES: This rule is effective March 5, 2014.

FOR FURTHER INFORMATION CONTACT: Ariel Jacobs, 206–526–4491; *Ariel.Jacobs@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Program Improvement and Enhancement rule (PIE 2) implemented revisions to the Pacific coast groundfish trawl rationalization program (program), a catch share program, and included clarifications of regulations that affect the limited entry trawl and limited entry fixed gear sectors managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). Additional background information regarding each of these revisions and clarifications was described in detail in the proposed rule (78 FR 43125, July 19, 2013) and in the final rule (78 FR 68764, November 15, 2013), and that information is not repeated here.

An error in amendatory language resulted in the deletion of the Vessel Limit table at § 660.140 (e)(4)(i). This correction restores the Vessel Limit table to § 660.140 (e)(4)(i) following the introductory paragraph.

Implementation of the Cost Recovery Program for the Pacific coast groundfish trawl rationalization program (78 FR 75268, December 11, 2013) revised regulations at § 660.140 (f)(6) by adding a requirement that cost recovery fees be paid before a first receiver site license will be reissued (''NMFS will not reissue a first receiver site license until all required cost recovery program fees, as specified at § 660.115, associated with that license have been paid.''). At the time the cost recovery final rule published, the PIE 2 final rule had published but was not yet effective, and the existing paragraph at § 660.140 (f)(6) had not been revised to reflect necessary changes implemented by PIE 2 to the first receiver site license renewal process. Consequently, in addition to adding a necessary requirement for cost recovery at § 660.140 (f)(6), the cost recovery final rule also overwrote necessary revisions contained in the PIE 2 regulations. This correction revises § 660.140 (f)(6) to reinstate language that was implemented by PIE 2 (78 FR 68764, November 15, 2013) and incorrectly removed by the cost recovery rule (78 FR 75268, December 11, 2013); the correction includes the language added by the Cost Recovery final rule (''NMFS will not reissue a first receiver site license until all required cost recovery program fees, as specified at § 660.115, associated with that license have been paid'').

Classification

The Assistant Administrator (AA) for Fisheries, NOAA, finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary, and contrary to the public interest. This document adds a Vessel Limit table that was incorrectly deleted at § 660.140 (e)(4)(i) and revises § 660.140 (f)(6) to replace language that was incorrectly removed or revised by 78 FR 75268 (December 11, 2013). Providing notice and comment on these changes is unnecessary because all are non-substantive and have no effect on the public or the operation of the fishery. Moreover, allowing inconsistencies in regulatory text is contrary to the public interest, because it could affect the enforceability of the regulations, and because inaccurate regulations could lead to public confusion and potentially to incorrect behavior. For the same reasons above, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness and makes this rule effective immediately upon publication.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: February 28, 2014.

Paul N. Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is corrected by making the following correcting amendments:

PART 660—FISHERIES OFF WEST COAST STATES

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

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

2. In § 660.140, revise paragraphs (e)(4)(i) and (f)(6) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(e) * * *

(4) * * *

(i) *Vessel limits.* For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the QP vessel limit (annual limit) in any year, and, for species covered by unused QP vessel limits (daily limit), may not have QP or IBQ pounds in excess of the unused QP vessel limit at any time. The QP vessel limit (annual limit) is calculated as all QPs transferred in minus all QPs transferred out of the vessel account. The unused QP vessel limits (daily limit) is calculated as unused available QPs plus any pending outgoing transfer of QPs.

VESSEL LIMITS

Species category	QP vessel limit (annual limit) (in percent)	Unused QP vessel limit (daily limit) (in percent)
Arrowtooth flounder	20	
Bocaccio S. of 40°10′ N. lat.	15.4	13.2
Canary rockfish	10	4.4
Chilipepper S. of 40°10′ N. lat.	15	
Cowcod S. of 40°10′ N. lat.	17.7	17.7
Darkblotched rockfish	6.8	4.5
Dover sole	3.9	
English sole	7.5	
Lingcod:		
N. of 40°10′ N. lat.	5.3	
S. of 40°10′ N. lat.	13.3	
Longspine thornyhead:		
N. of 34°27′ N. lat.	9	
Minor rockfish complex N. of 40°10′ N. lat.:		
Shelf species	7.5	
Slope species	7.5	
Minor rockfish complex S. of 40°10′ N. lat.:		
Shelf species	13.5	
Slope species	9	
Other flatfish complex	15	
Pacific cod	20	
Pacific halibut (IBQ) N. of 40°10′ N. lat.	14.4	5.4
Pacific ocean perch N. of 40°10′ N. lat.	6	4
Pacific whiting (shoreside)	15	
Petrale sole	4.5	
Sablefish:		
N. of 36° N. lat. (Monterey north)	4.5	
S. of 36° N. lat. (Conception area)	15	
Shortspine thornyhead:		
N. of 34°27′ N. lat.	9	
S. of 34°27′ N. lat.	9	
Splitnose rockfish S. of 40°10′ N. lat.	15	
Starry flounder	20	
Widow rockfish	8.5	5.1
Yelloweye rockfish	11.4	5.7
Yellowtail rockfish N. of 40°10′ N. lat.	7.5	
Non-whiting groundfish species	3.2	

* * * * *

(f) * * *

(6) *Re-registration of FRSL in subsequent years.* Existing first receiver site license holders must reapply annually by following the application process specified in paragraph (f)(3) of this section. If the existing license holder fails to reapply, the first receiver site license will expire as specified in paragraph (f)(5) of this section. NMFS will not reissue a first receiver site license until all required cost recovery program fees, as specified at § 660.115, associated with that license have been paid. For existing first receiver site license holders to continue to receive IFQ landings without a lapse in the effectiveness of their first receiver site license, the following re-registration deadlines apply:

(i) NMFS will mail a first receiver site license application to existing license holders on or about February 1 each year.

(ii) Applicants who want to have their new license effective for July 1 must submit their complete re-registration application to NMFS by April 15. For those first receiver site license holders who do not submit a complete re-registration application by April 15, NMFS may not be able to issue the new license by July 1 of that calendar year, and will issue the new license as soon as practicable.

* * * * *

[FR Doc. 2014–04907 Filed 3–4–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 43
Wednesday, March 5, 2014

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

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. R–1479 RIN 7100–AE–10]

Complementary Activities, Merchant Banking Activities, and Other Activities of Financial Holding Companies Related to Physical Commodities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: On January 21, 2014, the Board of Governors of the Federal Reserve System (Board) published in the **Federal Register** an advance notice of proposed rulemaking inviting public comment on various issues related to physical commodity activities conducted by financial holding companies and the restrictions imposed on these activities to ensure they are conducted in a safe and sound manner and consistent with applicable law.

Due to the range and complexity of the issues addressed in the advance notice of proposed rulemaking, the Board has determined that an extension of the public comment period until April 16, 2014, is appropriate. This action will allow interested persons additional time to analyze the notice and prepare their comments.

DATES: Comments on the proposed rule must be received on or before April 16, 2014.

ADDRESSES: You may submit comments by any of the methods identified in the advance notice of proposed rulemaking.[1] Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Associate General Counsel, (202) 452–2272, Michael Waldron, Special Counsel, (202) 452–2798; Benjamin McDonough, Senior Counsel, (202) 452–2036, April Snyder, Senior Counsel, (202) 452–3099, or Will Giles, Counsel, (202) 452–3351, Legal Division; or Mark Van Der Weide, Deputy Director, (202) 452–2263, Timothy Clark, Senior Associate Director, (202) 452–5264, Todd Vermilyea, Senior Associate Director, (202) 912–4310, or Robert Brooks, Senior Supervisory Financial Analyst, (202) 452–3103, Division of Banking Supervision and Regulation. Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869).

SUPPLEMENTARY INFORMATION: On January 21, 2014, the Board published in the **Federal Register** (79 FR 3329) an advance notice of proposed rulemaking (ANPR) inviting public comment on various issues related to physical commodity activities conducted by financial holding companies (FHCs) and the restrictions imposed on these activities to ensure they are conducted in a safe and sound manner and consistent with applicable law. The ANPR is designed to elicit views from the public on the risks and benefits of allowing FHCs to conduct physical commodity activities under the various provisions of the Bank Holding Company Act, whether risks to the safety and soundness of a FHC and its affiliated insured depository institutions and to the financial system warrant Board action to impose limitations on the scope of authorized activities and/or the manner in which those activities are conducted, and if so, what those limits should be. Once the Board has completed its review of this information, it will consider what further actions, including a rulemaking, are warranted.

In recognition of the complexities of the issues addressed and the variety of considerations involved with possible further actions, the Board requested that commenters respond to numerous questions. The ANPR stated that the public comment period would close on March 17, 2014.[2]

The Board has received a request from the public for an extension of the comment period to allow for additional time for comments related to the provisions of the proposed rule.[3] The Board believes that the additional period for comment will facilitate public comment on the questions posed by the Board in the ANPR. Therefore, the Board is extending the end of the comment period for the ANPR from March 17, 2014, to April 16, 2014.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, February 27, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–04742 Filed 3–3–14; 8:45 am]

BILLING CODE 6210–01–P

[1] *See* Complementary Activities, Merchant Banking Activities, and Other Activities of Financial Holding Companies related to Physical Commodities, 79 FR 3329 (Jan. 21, 2014).

[2] *Id.*

[3] *See* Comment letter to the Board from the American Bankers Association *et al.* (Feb. 7, 2014).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0828; Directorate Identifier 2012–NM–036–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Airbus Model A330–200 and –300 series airplanes; and Model A340–200 and –300 series airplanes. The NPRM proposed to supersede AD 2009–15–17 to continue to require inspections for damage to the protective treatments or any corrosion of all main landing gear (MLG) bogie beams, application of protective treatments, and corrective action if necessary. The NPRM also proposed to require modification of the MLG bogie beams, which would terminate the repetitive inspections for any modified bogie beam. The NPRM also proposed to allow optional methods of compliance for certain actions. The NPRM was prompted by reports of thin paint coats and paint degradation on enhanced MLG bogie beams, as well as reports that some airplanes have been inspected too early

and not re-inspected as needed. This action revises the NPRM by revising the compliance times and adding a one-time inspection for airplanes that have been inspected too early. We are proposing this supplemental NPRM (SNPRM) to detect and correct damage or corrosion of the MLG bogie beams, which could cause a runway excursion event, bogie beam detachment from the airplane, or MLG collapse, which could result in damage to the airplane and injury to the occupants. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by April 21, 2014.

ADDRESSES: You may send comments using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For Airbus service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com*; Internet *http://www.airbus.com*. For Messier-Dowty service information identified in this proposed AD, contact Messier-Dowty: Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, VA 20166–8910; telephone 703–450–8233; fax 703–404–1621; Internet *http://techpubs.services/messier-dowty.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0828; Directorate Identifier 2012–NM–036–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A330–200 and –300 series airplanes; and Model A340–200 and –300 series airplanes. The NPRM was published in the **Federal Register** on September 25, 2013 (78 FR 58978). The NPRM proposed to supersede AD 2009–15–17, Amendment 39–15980 (74 FR 37523, July 29, 2009), to require actions intended to address the unsafe condition for the specified products.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM (78 FR 58978, September 25, 2013), we have received reports that some airplanes were initially inspected too early (before 4.5 years since the airplane's first flight with a bogie beam installed or since the bogie was installed after overhaul) and have not been re-inspected. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0267, dated November 6, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The operator of an A330 aeroplane (which has a common bogie beam with the A340) reported a fracture of the Right Hand (RH) main landing gear (MLG) bogie beam, which occurred while turning during low speed taxi maneuvers. The bogie fractured aft of the pivot point and remained attached to the sliding tube by the brake torque reaction rods. After this RH bogie failure, the aeroplane continued for approximately 40 meters on the forks of the sliding member before coming to rest on the taxiway.
>
> The investigations revealed that this event was due to corrosion pitting occurring on the bore of the bogie beam.
>
> This condition, if not detected and corrected, could lead to a runway excursion event or to detachment of the bogie from the aeroplane, or to MLG collapse, possibly resulting in damage to the aeroplane and injury to the occupants.
>
> To enable early detection and repair of corrosion of the internal surfaces, EASA issued AD 2007–0314 [*http://ad.easa.europa.eu/ad/2007-0314R1*] to require a one-time inspection of all MLG bogie beams, except Enhanced MLG bogie beams, and the reporting of the results to Airbus. EASA AD 2007–0314 was revised and later superseded by EASA AD 2008–0093 [*http://ad.easa.europa.eu/ad/2008-0093*], reducing the inspection threshold period.
>
> The results of subsequent investigations showed thin paint coats and paint degradation, confirmed as well on Enhanced MLG bogie beams. To address this additional concern, EASA issued AD 2011–0141 [*http://ad.easa.europa.eu/ad/2011-0141*] [which was not mandated by the FAA], retaining the requirements of EASA AD 2008–0093, which was superseded, to require a one-time visual inspection of all MLG bogie beams, including a visual examination of the internal diameter for corrosion or damage to protective treatments of the bogie beam and measurement of the paint thickness on the internal bore, accomplishment of the applicable corrective actions and a modification of the MLG bogie beam to improve the coat paint application method, and application of corrosion protection.
>
> Prompted by in-service requests, EASA issued EASA AD 2012–0015 [*http://ad.easa.europa.eu/ad/2012-0015*] [corresponds with FAA NPRM (78 FR 58978, September 25, 2013)] retaining the requirements of EASA AD 2011–0141, which was superseded, and introducing repetitive inspections of the MLG bogie beams [for damage to protective treatments or corrosion], which allows extension of the compliance time for the MLG bogie beam modification [for improved protection from corrosion] from 15 years to 21 years.

Modification of a MLG bogie beam constitutes terminating action for the repetitive inspections for that MLG bogie beam.

Reports on inspection results provided to Airbus show that some aeroplanes were initially inspected too early (before 4.5 years since aeroplane first flight with bogie beam installed/installed after overhaul) and have not been re-inspected as required.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2012–0015, which is superseded, and redefines the inspection periodicity. This [EASA] AD also introduces a specific one-time inspection for aeroplanes that have been inspected too early.

This proposed AD also provides optional methods of compliance for inspections for corrosion and damage to the protective treatment, repairs, and modification, of both MLG bogie beams. You may examine the MCAI in the AD docket on the Internet at *http://regulations.gov* by searching and locating it in Docket No. FAA–2013–0828.

Relevant Service Information

Airbus has issued the following service bulletins. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Airbus Mandatory Service Bulletin A330–32–3225, Revision 02, dated October 26, 2012.
- Airbus Mandatory Service Bulletin A330–32–3237 (for Model A330 series airplanes), Revision 01, dated October 14, 2011.
- Airbus Mandatory Service Bulletin A340–32–4268, Revision 03, dated January 14, 2013.
- Airbus Mandatory Service Bulletin A340–32–4279 (for Model A340 series airplanes), Revision 01, dated October 14, 2011.

Messier Dowty has issued the following service bulletins. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Messier Dowty Service Bulletin A33/34–32–271, Revision 1, dated November 16, 2007.
- Messier-Dowty Service Bulletin A33/34–32–278, including Appendices A and B, Revision 1, dated August 24, 2011.
- Messier-Dowty Service Bulletin A33/34–32–283, including Appendix A, Revision 1, dated July 10, 2012.
- Messier-Dowty Service Bulletin A33/34–32–284, including Appendix A, Revision 1, dated July 10, 2012.

Comments

We gave the public the opportunity to comment on the NPRM (78 FR 58978, September 25, 2013). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Replace Modification 58896 With Modification 54500

Delta Air Lines Inc. and US Airways requested that paragraph (h) of the NPRM (78 FR 58978, September 25, 2013) be changed to replace Modification 58896 with Modification 54500. The commenters stated that paragraph (h) of the NPRM specifies doing repetitive inspections on airplanes having all serial numbers, except airplanes on which Modification 58896 has been embodied in production; however, paragraph (g) of the NPRM and AD 2009–15–17, Amendment 39–15980 (74 FR 37523, July 29, 2009) are not applicable to airplanes with Modification 54500 embodied in production.

We agree with the commenters for the reasons provided. We have revised the affected airplanes specified in paragraph (g) of this SNPRM (paragraph (h) of the NPRM (78 FR 58978, September 25, 2013)). Paragraph (g) of this SNPRM affects airplanes and MLGs having one of the configurations specified below:

- Airbus Modification 54500 not embodied in production.
- Airbus Service Bulletin A330–32–3212; or A340–32–4256 not embodied in service.
- Airbus Service Bulletin A330–32–3222; or A340–32–4265 embodied in service.

Request To Require Reporting Requirements Only For Positive Findings

Delta Air Lines Inc. (Delta) requested that reporting be mandated only for positive findings, specifically for the findings beyond the applicable component maintenance manual repair limits.

We disagree with the request to report only positive findings. All findings (positive and negative) must be reported to provide the manufacturer with information regarding the extent of the problem in the affected fleet, and to help determine whether a design change of the affected airplane part is needed. No change has been made to this SNPRM in this regard.

Request To Extend the Compliance Time for Reporting Requirements

Delta requested that we extend the compliance time for reporting from 90 days to 180 days to allow findings to be batched together for a grouped report, and to preclude undue compliance issues related to late reporting.

We do not agree with the request to extend the compliance time for reporting. Prompt reporting will ensure the timely update of the operator's maintenance documentation. However, under the provisions of paragraph (q) of this SNPRM, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. No change has been made to this SNPRM in this regard.

Request To Allow Use of Reporting Sheet in Messier-Dowty Service Bulletin A33/34–32–278, dated February 17, 2010

Delta stated that the NPRM (78 FR 58978, September 25, 2013) specifies using the reporting sheet in Airbus Service Bulletin A330–32–3237, dated January 18, 2011; however, this service bulletin does not have a reporting sheet included. Delta requested that we allow the use of the reporting sheet included in Messier-Dowty Service Bulletin A33/34–32–278, dated February 17, 2010 instead.

We disagree with the request. Airbus Service Bulletin A330–32–3237, Revision 01, dated October 14, 2011, includes a reporting sheet that is required by this AD. No change has been made to this SNPRM in this regard.

Other Changes to This SNPRM

We have revised the affected airplanes for paragraph (k) of this SNPRM (paragraph (i) in the NPRM (78 FR 58978, September 25, 2013)). All airplanes are affected by the actions specified by paragraph (k) of this SNPRM.

FAA's Determination and Requirements of This SNPRM

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the NPRM (78 FR 58978, September 25, 2013). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Differences Between This SNPRM and the MCAI or Service Information

This SNPRM differs from the MCAI and/or service information as follows: The MCAI specifies repair and corrective actions in accordance with Airbus Mandatory Service Bulletin A330–32–3225, Revision 02, dated October 26, 2012; or A340–32–4268, Revision 03, dated January 14, 2013. However, Airbus Mandatory Service Bulletins A330–32–3225, Revision 02, dated October 26, 2012; and A340–32–4268, Revision 03, dated January 14, 2013; do not describe those actions. Paragraph (j)(2) of this SNPRM specifies repair and corrective actions in accordance with Messier-Dowty Service Bulletin A33/34–32–272, Revision 1, including Appendices A, B, C, and D, dated September 22, 2008. In addition, we refer to Messier-Dowty Service Bulletin A33/34–32–272, Revision 1, including Appendices A, B, C, and D, dated September 22, 2008, in paragraph (j)(1) of this AD for applying the protective treatments. This has been coordinated with Airbus.

Costs of Compliance

We estimate that this SNPRM affects 51 airplanes of U.S. registry.

We also estimate that it would take up to 34 work-hours per product to comply with the basic requirements of this SNPRM. The average labor rate is $85 per work-hour. Required parts would cost about $2,890 per product. Based on these figures, we estimate the cost of this SNPRM on U.S. operators to be $147,390, or $2,890 per product.

In addition, we estimate that the optional modification would take about 10 work-hours and require parts costing $0, for a cost of $850 per product. We have no way of determining the number of aircraft that might need the corrective action.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Amend § 39.13 by removing Airworthiness Directive (AD) 2009–15–17, Amendment 39–15980 (74 FR 37523, July 29, 2009), and adding the following new AD:

Airbus: Docket No. FAA–2013–0828; Directorate Identifier 2012–NM–036–AD.

(a) Comments Due Date

We must receive comments by April 21, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers, except those airplanes on which Airbus Modification 58896 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of thin paint coats and paint degradation on enhanced main landing gear (MLG) bogie beams. We are issuing this AD to detect and correct damage or corrosion of the MLG bogie beams, which could cause a runway excursion event, bogie beam detachment from the airplane, or MLG collapse, which could result in damage to the airplane and injury to the occupants.

(f) Compliance

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

(g) Repetitive Inspections for Certain Airplane Configurations

For airplanes and MLGs having one of the configurations specified in paragraphs (g)(1), (g)(2), or (g)(3) of this AD: After 54 months at the earliest, but no later than 72 months, since the left-hand (LH) or right-hand (RH) MLG bogie beam's first flight on an airplane, or since its first flight on an airplane after overhaul, as applicable: Clean the internal bore and do a detailed inspection for corrosion and damage to the protective treatments, and measure the paint thickness on the internal bore of the internal surfaces of the LH and RH MLG bogie beams, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3225, Revision 02, dated October 26, 2012; or Airbus Service Bulletin A340–32–4268, Revision 03, dated January 14, 2013; as

applicable. Repeat the inspections thereafter at intervals of no less than 54 months, but no more than 72 months after the most recent inspection. During overhaul of a MLG bogie beam, any corrosion will be removed, which means that the first inspection after overhaul of that bogie beam, as required by this paragraph, is between 54 months and 72 months after that overhaul.

(1) Airbus Modification 54500 not embodied in production.

(2) Airbus Service Bulletin A330–32–3212; or A340–32–4256 not embodied in service.

(3) Airbus Service Bulletin A330–32–3222; or A340–32–4265 embodied in service.

(h) Optional Methods of Compliance for Certain Airplane Configurations

Inspections and corrective actions on both MLG bogie beams done in accordance with the instructions of Messier-Dowty Service Bulletin A33/34–32–271, Revision 1, dated November 16, 2007; or A33/34–32–272, Revision 1, dated September 22, 2008, as applicable, are acceptable methods of compliance for the requirements of paragraph (g) of this AD, provided each inspection is accomplished between 54 months and 72 months since the first flight of the affected MLG bogie beam on an airplane, or since its first flight after its last overhaul, as applicable.

(i) One-Time Specific Inspection for Certain Airplane Configurations

For airplanes on which the modification specified in paragraph (k) or (m)(2) of this AD, or the inspection specified in paragraph (m)(1) of this AD, has not been done as of the effective date of this AD, and on which a LH or RH MLG bogie beam has been inspected earlier than 4.5 years since first flight of the affected MLG bogie beam, or since the bogie beam's first flight after the bogie beam's last overhaul, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3225 or A340–32–4268: At the applicable time specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, clean the internal bore and do a detailed inspection of internal surfaces of the LH and RH MLG bogie beams to detect corrosion, damage to the protective treatments, and to measure the paint thickness on the internal bore, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–32–3225, Revision 02, dated October 26, 2012; or Airbus Service Bulletin A340–32–4268, Revision 03, dated January 14, 2013; as applicable.

(1) For MLG bogie beams having the configurations specified in both paragraphs (i)(1)(i) and (i)(1)(ii) of this AD: Do the one-time specific inspection specified in paragraph (i) of this AD within 9 months after the effective date of this AD.

(i) MLG bogie beams having between 4.5 years and 10 years since first flight on an airplane, or since first flight on an airplane since overhaul.

(ii) MLG bogie beam on which the first inspection was done after 4 years and 3 months and before 4 years and 6 months since first flight of the MLG bogie beam, or since the bogie beam's first flight after last overhaul, as applicable.

(2) For MLG bogie beams having the configurations specified in both paragraphs (i)(2)(i) and (i)(2)(ii) of this AD: Do the one-time specific inspection specified in paragraph (i) of this AD within 3 months after the effective date of this AD.

(i) MLG bogie beams having between 4.5 and 10 years since first flight on an airplane, or since first flight on an airplane since overhaul.

(ii) MLG bogie beams on which the first inspection was done after 3 years and 9 months and before 4 years and 3 months inclusive since first flight of the MLG bogie beam, or since the bogie beam's first flight after the bogie beam's last overhaul, as applicable.

(3) For bogie beams having the configurations specified in both paragraphs (i)(3)(i) and (i)(3)(ii) of this AD: Do the one-time specific inspection specified in paragraph (i) of this AD within 3 months after the effective date of this AD.

(i) Bogie beams having between 4.5 and 8 years since first flight on an airplane or since first flight on an airplane since overhaul.

(ii) Bogie beams on which the first inspection was done before 4 years and 3 months since first flight of the MLG bogie beam, or since the bogie beam's first flight after the bogie beam's last overhaul.

(4) For bogie beams having the configurations specified in both paragraphs (i)(4)(i) and (i)(4)(ii) of this AD: Do the one-time specific inspection specified in paragraph (i) of this AD within 1 month after the effective date of this AD.

(i) Bogie beams having between 8 and 10 years since first flight on an airplane, or since first flight on an airplane since overhaul.

(ii) Bogie beams on which the first inspection was done before 3 years and 9 months since first flight of the MLG bogie beam, or since the bogie beam's first flight after the bogie beam's last overhaul, and the bogie beam has accumulated more than 8 years as of the effective date of this AD.

(5) After accomplishment of the one-time specific inspection specified in paragraph (i) of this AD, repeat the actions specified in paragraph (g) of this AD at the times specified in paragraph (g) of this AD.

(j) Corrective Actions

(1) If, during any inspection required by paragraph (g) or (i) of this AD, no damage or corrosion is found, before further flight, apply the protective treatments to the bogie beam, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–272, Revision 1, including Appendices A, B, C, and D, dated September 22, 2008.

(2) If, during any inspection required by paragraph (g) or (i) of this AD, damage or corrosion is found, before further flight, repair and apply the protective treatments to the bogie beam, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–272, Revision 1, including Appendices A, B, C, and D, dated September 22, 2008.

(k) Inspection and Corrective Actions for All Airplanes

For all airplanes: Before the accumulation of 252 months on a MLG bogie beam, or within 90 days after the effective date of this AD, whichever occurs later, do the actions specified in paragraphs (k)(1) and (k)(2) of this AD concurrently and in sequence.

(1) Do a detailed inspection for damage and corrosion of the internal bores of the LH and RH MLG bogie beam, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3237; or A340–32–4279; both Revision 01, both dated October 14, 2011, as applicable. If any damage or corrosion is found, before further flight, repair, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3237; or A340–32–4279; both Revision 01, both dated October 14, 2011, as applicable.

(2) Modify and re-identify, as applicable, the LH and RH MLG bogie beams, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3237; or A340–32–4279; both Revision 01, both dated October 14, 2011, as applicable.

(3) The inspection requirements of paragraph (k)(1) of this AD, and the modification requirements only of paragraph (k)(2) of this AD do not apply to any MLG bogie beam with a serial number is listed in Appendix A of Messier-Dowty Service Bulletin A33/34–32–283; or A33/34–32–284; both Revision 1, both dated July 10, 2012, as applicable.

(l) Optional Terminating Action

Modification of both MLG bogie beams done in accordance with paragraph (k) of this AD, or as specified in paragraphs (n)(1) and (n)(2) of this AD, terminates the repetitive inspections required by paragraph (g) of this AD for that modified MLG bogie beam.

(m) Optional Methods of Compliance

(1) Inspections for corrosion and damage to the protective treatment of both bogie beams, and repairs, done in accordance with Messier-Dowty Service Bulletin A33/34–32–278, including appendices A and B, Revision 1, dated August 24, 2011, are acceptable methods of compliance with the requirements of paragraph (k)(1) of this AD.

(2) Modification of both MLG bogie beams, done in accordance with Messier-Dowty Service Bulletins A33/34–32–283; and A33/34–32–284; both including Appendix A, both Revision 1, both dated July 10, 2012, as applicable, is an acceptable method of compliance with the requirements of paragraph (k)(2) of this AD.

(n) Parts Installation Limitations

(1) After modification of an airplane as required by paragraph (k) of this AD, or as specified in paragraphs (m)(1) and (m)(2) of this AD, do not install a MLG bogie beam unless it is in compliance with the requirements of paragraph (n)(1)(i), (n)(1)(ii), or (n)(1)(iii) of this AD.

(i) That MLG bogie beam has been modified and re-identified in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–32–3237; or A340–32–4279; both Revision 01, both dated October 14, 2011, as applicable.

(ii) That MLG bogie beam has been inspected and corrected in accordance with the Accomplishment Instructions of Messier-

Dowty Service Bulletin A33/34–32–278 Revision 1, dated August 24, 2011; and modified in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–283; or A33/34–32–284; both Revision 1, both dated July 10, 2012.

(iii) That MLG bogie beam has a serial number listed in Appendix A of Messier Dowty Service Bulletin A33/34–32–283 or A33/34–32–284, both Revision 1, both dated July 10, 2012.

(2) As of the effective date of this AD, except as specified in paragraph (n)(1) of this AD, installation of a MLG bogie beam on an airplane is allowed, provided that following the installation it is inspected and corrected in accordance with the requirements of this AD.

(o) Reporting Requirement

(1) Submit a report of the findings (both positive and negative) of each inspection required by paragraph (g) or (k) of this AD, as applicable, to Airbus, Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, using the applicable reporting sheet in Airbus Service Bulletin A330–32–3237; or A340–32–4279; both dated January 18, 2011, at the applicable time specified in paragraph (o)(1)(i) or (o)(1)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 90 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 90 days after the effective date of this AD.

(2) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (i) of this AD to Airbus, Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, using the applicable reporting sheet in Airbus Service Bulletin A330–32–3237; or A340–32–4279; both dated January 18, 2011, at the applicable time specified in paragraph (o)(2)(i) or (o)(2)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(p) Credit for Previous Actions

(1) This paragraph provides credit for the corresponding inspections and corrective actions done on a LH or RH MLG bogie beam required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–32–3225, dated November 21, 2007; or Revision 01, dated October 30, 2008; provided these inspections and corrective actions were accomplished between 54 months and 72 months since first flight of the affected MLG bogie beam on an airplane, or since its first flight after its last overhaul, as applicable. Airbus Mandatory Service Bulletin A330–32–3225, dated November 21, 2007 is not incorporated by reference in this AD. Airbus Mandatory Service Bulletin A330–32–3225, Revision 01, dated October 30, 2008 was incorporated by reference in AD 2009–15–07, Amendment 39–15980 (74 FR 37523, July 29, 2009).

(2) This paragraph provides credit for the corresponding inspections and corrective actions done on a LH or RH MLG bogie beam required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A340–32–4268, dated November 21, 2007; Revision 01, dated October 30, 2008; or Revision 02, dated October 26, 2012, provided these inspections and corrective actions were accomplished between 54 months and 72 months since first flight of the affected MLG bogie beam on an airplane, or since its first flight after its last overhaul, as applicable. Airbus Mandatory Service Bulletin A340–32–4268, dated November 21, 2007; and Revision 02, dated October 26, 2012; are not incorporated by reference in this AD. Airbus Mandatory Service Bulletin A340–32–4268, Revision 01, dated October 30, 2008, was incorporated by reference in AD 2009–15–17, Amendment 39–15980 (74 FR 37523, July 29, 2009).

(3) This paragraph provides credit for the corresponding actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Messier Dowty Service Bulletin A33/34–32–271, dated September 13, 2007, which is not incorporated by reference in this AD.

(4) This paragraph provides credit for the corresponding actions required by paragraphs (h) and (j) of this AD, if those actions were performed before the effective date of this AD using Messier-Dowty Service Bulletin A33/34–32–272, including Appendices A, B, C, and D, dated November 16, 2007, which is not incorporated by reference in this AD.

(5) This paragraph provides credit for the corresponding actions required by paragraphs (k), (n)(1)(i), and (o) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A330–32–3237, dated January 18, 2011, which is not incorporated by reference in this AD.

(6) This paragraph provides credit for the corresponding actions required by paragraphs (k), (n)(1)(i), and (o) of this AD, if those actions were performed before the effective date of this AD using Airbus Mandatory Service Bulletin A340–32–4279, dated January 18, 2011, which is not incorporated by reference in this AD.

(7) This paragraph provides credit for the corresponding actions required by paragraphs (k)(3), (m)(2), (n)(1)(ii), and (n)(1)(iii) of this AD, if those actions were performed before the effective date of this AD using Messier-Dowty Service Bulletin A33/34–32–283, including Appendix A, dated May 11, 2010, which is not incorporated by reference in this AD.

(8) This paragraph provides credit for the corresponding actions required by paragraphs (k)(3), (m)(2), (n)(1)(ii), and (n)(1)(iii) of this AD, if those actions were performed before the effective date of this AD using Messier-Dowty Service Bulletin A33/34–32–284, including Appendix A, dated May 11, 2010, which is not incorporated by reference in this AD.

(9) This paragraph provides credit for the corresponding actions required by paragraphs (m)(1) and (n)(1)(ii) of this AD, if those actions were performed before the effective date of this AD using Messier-Dowty Service Bulletin A33/34–32–278, including Appendices A and B, dated February 17, 2010, which is not incorporated by reference in this AD.

(q) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or by the Design Approval Holder with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(r) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA

Airworthiness Directive 2013–0267, dated November 6, 2013, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013&-0828-0001*.

(2) For Airbus service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com*. For Messier-Dowty service information identified in this AD, contact Messier-Dowty: Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, VA 20166–8910; telephone 703–450–8233; fax 703–404–1621; Internet *https://techpubs.services/messier-dowty.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 19, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04892 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0127; Directorate Identifier 2013–NM–237–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 767 airplanes. This proposed AD was prompted by reports of latently failed fuel shutoff valves discovered during fuel filter replacement. This proposed AD would require revising the maintenance or inspection program to include new airworthiness limitations. We are proposing this AD to detect and correct latent failures of the fuel shutoff valve to the engine, which could result in the inability to shut off fuel to the engine and, in case of certain engine fires, an uncontrollable fire that could lead to wing failure.

DATES: We must receive comments on this proposed AD by April 21, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6509; fax: (425) 917–6590; email: rebel.nichols@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0127; Directorate Identifier 2013–NM–237–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of latently failed fuel shutoff valves discovered during fuel filter replacement. Deficiencies in the valve actuator design have resulted in latent failures of the fuel shutoff valve to the engine. This condition, if not detected and corrected, could result in latent failures of the fuel shutoff valve to the engine, which could result in the inability to shut off fuel to the engine and, in case of certain engine fires, an uncontrollable fire that could lead to wing failure.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require revising the maintenance or inspection program to include new airworthiness limitations. The airworthiness limitations would allow an operator to perform the operational check as either a maintenance action or a flightcrew action. The flightcrew or maintenance crew would monitor the engine spar valve lights for a few seconds immediately after moving the engine fuel condition levers. Flightcrews can perform this operational check while starting the engine or while shutting down the engine. Maintenance crews can do this operational check as a separate action that does not require actual starting of the engine.

This proposed AD would require revisions to certain operator maintenance documents to include these new inspections. Compliance with these inspections is required by section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, an operator might not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) in accordance with the provisions of paragraph (i) of this proposed AD. The request should include a description of changes to the proposed inspections that will ensure the continued operational safety of the airplane.

Interim Action

We consider this proposed AD interim action. The manufacturer is

currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD affects 450 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Incorporating Airworthiness Limitation	1 work-hour × $85 per hour = $85	$0	$85	$38,250

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2014–0127; Directorate Identifier 2013–NM–237–AD.

(a) Comments Due Date

We must receive comments by April 21, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2823, Fuel Selector/Shut-off Valve.

(e) Unsafe Condition

This AD was prompted by reports of latently failed fuel shutoff valves discovered during fuel filter replacement. We are issuing this AD to detect and correct latent failures of the fuel shutoff valve to the engine, which could result in the inability to shut off fuel to the engine and, in case of certain engine fires, an uncontrollable fire that could lead to wing failure.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to add airworthiness limitation numbers 28–AWL–ENG, 28–AWL–MOV, and 28–AWL–APU, by incorporating the information specified in Figure 1, Figure 2, and Figure 3 to paragraph (g) of this AD into the Airworthiness Limitations Section of the Instructions for Continued Airworthiness. The initial compliance time for accomplishing the actions specified in Figure 1, Figure 2, and Figure 3 to paragraph (g) of this AD is within 7 days after accomplishing the maintenance or inspection program revision required by this paragraph.

FIGURE 1 TO PARAGRAPH (g) OF THIS AD: ENGINE SHUT-OFF VALVE (FUEL SPAR VALVE) POSITION INDICATION OPERATIONAL CHECK

AWL Number	Task	Interval	Applicability	Description
28–AWL–ENG.	ALI	DAILY	767–200, –300, and –300F airplanes.	Engine Shut-Off Valve (Fuel Spar Valve) Position Indication Operational Check. Concern: The MOV actuator design can result in airplanes operating with a failed MOV actuator that is not reported. A latently failed MOV actuator could prevent fuel shut off to an engine. In the event of certain engine fires, the potential exists for an engine fire to be uncontrollable.

FIGURE 1 TO PARAGRAPH (g) OF THIS AD: ENGINE SHUT-OFF VALVE (FUEL SPAR VALVE) POSITION INDICATION OPERATIONAL CHECK—Continued

AWL Number	Task	Interval	Applicability	Description
				Perform one of the following operational checks of the Fuel Spar Valve position indication (unless checked by the flight crew in a manner approved by the principal operations inspector): A. Operational Check during engine shutdown 1. Do an operational check of the left engine fuel spar valve actuator. a. As the L FUEL CONTROL switch on the quadrant control stand is moved to the CUTOFF position, verify the left SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. b. If the test fails (light fails to illuminate), before further flight, repair faults as required (refer to Boeing Airplane Maintenance Manual (AMM) 28–22–11). 2. Do an operational check of the right engine fuel spar valve actuator. a. As the R FUEL CONTROL switch on the quadrant control stand is moved to the CUTOFF position, verify the right SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. b. If the test fails (light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11). B. Operational check during engine start 1. Do an operational check the left engine fuel spar valve actuator. a. As the L FUEL CONTROL switch on the quadrant control stand is moved to the RUN (or RICH) position, verify the left SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. b. If the test fails (light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11). 2. Do an operational check of the right engine fuel spar valve actuator. a. As the R FUEL CONTROL switch on the quadrant control stand is moved to the RUN (or RICH) position, verify the right SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. b. If the test fails (light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11). C. Operational check without engine operation 1. Make sure all fuel pump switches on the Overhead Panel are in the OFF position. 2. If the APU is running, open and collar the L FWD FUEL BOOST PUMP (C00372) circuit breaker on the Main Power Distribution Panel. 3. Make sure LEFT and RIGHT ENG FIRE switches on the Aft Aisle Stand are in the NORMAL (IN) position. 4. Make sure L and R ENG STAR Selector Switches on the Overhead Panel are in the OFF position. 5. For airplanes with PW4000 series engines without SCU, make sure the EEC MAINT ''L ENG POWER'' and ''R ENG POWER'' switches on the right side P61 maintenance panel is in the ''NORM'' position. 6. Do an operational check of the left engine fuel spar valve actuator. a. Move L FUEL CONTROL switch on the quadrant control stand to the RUN position and wait 10 seconds. NOTE: It is normal under this test condition for the ENG VALVE disagreement light on the quadrant control stand to stay illuminated. b. Move L FUEL CONTROL switch on the quadrant control stand to the CUTOFF position. c. Verify the left SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. d. If the test fails (light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11). 7. Operational check the right engine fuel spar valve actuator. a. Move R FUEL CONTROL switch on the quadrant control stand to the RUN position and wait 10 seconds. NOTE: It is normal under this test condition for the ENG VALVE disagreement light on the quadrant control stand to stay illuminated. b. Move R FUEL CONTROL switch on the quadrant control stand to the CUTOFF position. c. Verify the right SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. d. If the test fails (light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11). 8. If the L FWD FUEL BOOST PUMP circuit breaker was collared in step C.2., remove collar and close.

FIGURE 2 TO PARAGRAPH (g) OF THIS AD: ENGINE SHUT-OFF VALVE (FUEL SPAR VALVE) MOV ACTUATOR INSPECTION

AWL Number	Task	Interval	Applicability	Description
28–AWL–MOV	ALI	10 DAYS ..	767–400ER series airplanes.	Engine Shut-Off Valve (Fuel Spar Valve) MOV Actuator Inspection Concern: The MOV actuator design can result in airplanes operating with a failed MOV actuator that is not reported. A latently failed MOV actuator would prevent fuel shutoff to an engine. In the event of certain engine fires, the potential exists for an engine fire to be uncontrollable. Perform an inspection of the Fuel Spar Valve MOV Actuator position (refer to Boeing AMM 28–22–00). NOTE: The Fuel Spar Valve MOV Actuator is located behind latch panel 551 DB (left engine) and latch panel 651 DB (right engine). 1. Make sure the Engine Control Switch is in the CUTOFF position. 2. Inspect the left engine fuel spar valve actuator located in the left rear spar. a. Verify the manual override handle on the engine fuel spar valve actuator is in the CLOSED position. b. Repair or replace any MOV actuator that is not in the CLOSED position (refer to Boeing AMM 28–22–11). 3. Inspect the right engine fuel spar valve actuator located in the right rear spar. a. Verify the manual override handle on the engine fuel spar valve actuator is in the CLOSED position. b. Repair or replace any MOV actuator that is not in the CLOSED position (refer to Boeing AMM 28–22–11).

FIGURE 3 TO PARAGRAPH (g) OF THIS AD: APU FUEL VALVE POSITION INDICATION OPERATIONAL CHECK

AWL Number	Task	Interval	Applicability	Description
28-AWL-APU ..	ALI	10 DAYS ..	ALL	APU Fuel Valve Position Indication Operational Check Concern: The MOV actuator design can result in airplanes operating with a failed MOV actuator that is not reported. A latently failed MOV actuator could prevent fuel shut off to the APU. In the event of certain APU fires, the potential exists for an APU fire to be uncontrollable. Perform the operational check of the APU Fuel Valve position indication (unless checked by the flight crew in a manner approved by the principal operations inspector) A. Do an operational check of the APU Fuel Valve position indication. 1. If the APU is running, unload and shut down the APU using standard practices. 2. Make sure the APU FIRE switch on the Aft Aisle Stand is in the NORMAL (IN) position. 3. Make sure there is at least 1,000 lbs (500 kgs) of fuel in the Left Main Tank. 4. Move APU Selector switch on the Overhead Panel to the ON position and wait 10 seconds. 5. Move APU Selector switch on the Overhead Panel to the OFF position. 6. Verify the APU FAULT light on the Overhead Panel illuminates and then goes off. 7. If the test fails (light fails to illuminate), before further flight requiring APU availability, repair faults as required (refer to Boeing AMM 28–25–02). NOTE: Dispatch may be permitted per MMEL 28–25–02 if APU is not required for flight.

(h) No Alternative Actions and Intervals

After accomplishment of the maintenance or inspection program revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO) FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOCvRequests@faa.gov*.

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

(j) Related Information

For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6509; fax: (425) 917–6590; email: *rebel.nichols@faa.gov*.

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

Ross Landes,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04893 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0629; Directorate Identifier 2012–NM–214–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

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

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), which applies to certain Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The NPRM would have required installing fuses in the maximum level (Max Level) sensor wiring, and revising the airplane maintenance program by incorporating critical design configuration control limitations. Since the NPRM was issued, we have received new data indicating that the modification proposed in the NPRM interfered with the normal operation of the Max Level shutoff system. Accordingly, the NPRM is withdrawn.

DATES: As of March 5, 2014, the proposed rule, which was published in the **Federal Register** on July 31, 2013 (78 FR 46298), is withdrawn.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0629; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD action, the NPRM (78 FR 46298, July 31, 2013), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for a new AD for certain Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on July 31, 2013 (78 FR 46298). The NPRM resulted from a design review, which revealed that, under certain failure conditions of the Max Level sensor wiring, a short circuit may develop that causes a hot spot on the wiring conduit, or puncturing of the wiring conduit wall in the center wing fuel tank. The NPRM would have required installing fuses in the Max Level sensor wiring, and revising the airplane maintenance program by incorporating critical design configuration control limitations. The proposed actions were intended to prevent an ignition source in the center wing fuel tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

Actions Since NPRM (78 FR 46298, July 31, 2013) Was Issued

Since we issued the NPRM (78 FR 46298, July 31, 2013), we received a report that after an operator installed the fuses in the wiring of the Max Level sensors of the center fuel tank, as specified in Fokker Service Bulletin SBF100–28–073, dated August 10, 2012, the Max Level shut-off system did not operate correctly. After initial refueling shut-off, refueling restarted, leading to fuel spilling onto the platform. The manufacturer is developing a modification to address the unsafe condition that does not interfere with the normal operation of the Max Level shutoff system. We might issue AD rulemaking once the manufacturer has issued service information that includes the modification.

FAA's Conclusions

Upon further consideration, we have determined that the NPRM (78 FR 46298, July 31, 2013) does not adequately address the identified unsafe condition. Accordingly, the NPRM is withdrawn.

Withdrawal of the NPRM (78 FR 46298, July 31, 2013) does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Impact

Since this action only withdraws an NPRM (78 FR 46298, July 31, 2013), it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

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

The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2013–0629, Directorate Identifier 2012–NM–214–AD, which was published in the **Federal Register** on July 31, 2013 (78 FR 46298, July 31, 2013).

Issued in Renton, Washington, on February 19, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04890 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0636; Directorate Identifier 2012–NM–037–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Airbus Model A300 B4–601, B4–603, and B4–605R airplanes; Model A300 F4–605R airplanes; Model A300 C4–605R Variant F airplanes; and Model A310–204 and –304 airplanes; powered by General Electric (GE) CF6–80C2 series engines. The NPRM proposed to require installing a shunt of the rotary selector (introducing an auto-relight function). The NPRM was prompted by reports of two single-engine flameout events during inclement weather. This action revises the NPRM by adding an additional wiring modification to a certain circuit breaker panel. We are proposing this AD to prevent a long engine restart sequence after a non-selection of continuous relight by the crew and a flameout event of both engines, which could result in reduced controllability of the airplane, especially at low altitude. Since these actions impose an additional burden over that

proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this proposed AD by April 21, 2014.

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

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

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at http://www.regulations.gov by searching for and locating Docket No. FAA–2012–0636; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the ADDRESSES section. Include ''Docket No. FAA–2012–0636; Directorate Identifier 2012–NM–037–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on June 18, 2012 (77 FR 36211). The NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since the NPRM (77 FR 36211, June 18, 2012) was issued, we have determined it is necessary to require an additional wiring modification of the circuit breaker panel, 105VU, to make it possible to complete the modification of the shunt of the rotary selector (introducing an auto-relight function).

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A300–74–6003, Revision 05, dated May 23, 2013; and Mandatory Service Bulletin A310–74–2003, Revision 05, dated May 23, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2011–0113, dated June 17, 2011.

Comments

We have considered the following comments received on the NPRM (77 FR 36211, June 18, 2012). The Air Line Pilots Association, International, supported the NPRM and its compliance time.

Request To Withdraw the NPRM (77 FR 36211, June 18, 2012) Based on Safety Record

Based on its safety record, FedEx requested withdrawal of the NPRM (77 FR 36211, June 18, 2012). FedEx stated that the impact of the NPRM solely falls on its company; therefore, its exemplary safety record, superior pilot training, and performance standards should be significant factors in the FAA's decision regarding the need for the proposed AD.

FedEx stated that a review of operational events on past and present airplanes operated by FedEx revealed that there are no known occurrences of the inclement weather flameouts that are the primary driver of the NPRM (77 FR 36211, June 18, 2012). In addition, FedEx stated that it has fully implemented the full authority digital engine control (FADEC) software upgrades required by AD 2007–21–06, Amendment 39–15224 (72 FR 57848, October 11, 2007), on certain engines in its fleet. FedEx stated that the latest GE guidance indicates that the worldwide rate of engine flameouts has decreased significantly in the last several years and that the rate associated with full authority digital engine control (FADEC) engine models in particular has shown a significant decline and is now well below that of the power management control fleet.

We disagree with FedEx's request. We have received reports of two single-engine flameout events during inclement weather. We consider this to be an unsafe condition that could result in reduced controllability of the airplane, especially at low altitude. Also, not all affected airplanes have FADEC-controlled engines installed.

We consider a design solution that does not require pilot action to be a more robust mitigating action to address an unsafe condition. We have determined that it is necessary to proceed with issuing this SNPRM to adequately address the identified unsafe condition. Affected operators may request approval of an alternative method of compliance (AMOC) under the provisions of paragraph (i)(1) of this SNPRM by submitting data substantiating that the change would provide an acceptable level of safety.

Request To Withdraw the NPRM (77 FR 36211, June 18, 2012) Based on Operational Impact

FedEx also requested withdrawal of the NPRM (77 FR 36211, June 18, 2012) based on operational impact. FedEx stated that the modifications required by the proposed AD would affect the interface between the flight crew and the airplane, and would alter the pilot's degree of control in the event of an engine event. FedEx stated that the modification is intended to ensure rapid relight of the engine following a flameout in the event that the crew does not correctly follow procedures and manually select the continuous relight function when entering an inclement

weather environment. FedEx stated that it is consistently following proper procedures and has trained crews accordingly.

In addition, FedEx stated that there does not appear to be any concurrent requirement for the CF6–80C2-powered Model MD–11 airplane in the FedEx fleet. The current MD–11 flight manual provides for an optional ice detection system that automatically switches continuous relight on in the case of icing conditions. FedEx stated that this system is not required and not desired by the FedEx pilots.

FedEx stated that in the view of the air operation division (AOD) flight technical operations and fleet technical pilots, a controlled (as opposed to automated) relight of an engine after flameout has a greater chance of success. FedEx stated that under the current configuration, the flightcrews have the capability—with guidance on recommended in-flight restart airspeeds and altitudes from the quick reference handbook (QRH)—to ensure that accessory loads have been reduced and the fuel flow has been managed through throttle movements prior to a relight attempt. FedEx stated that an automated system could potentially force a relight attempt under non-nominal conditions, which could actually delay a successful engine restart. FedEx noted an example would be a restart attempt when windmilling N2 is below the recommended restart value in the GE operating instructions.

FedEx stated, therefore, its position is that the steps that have already been taken, and the controls that are currently in place to ameliorate the extremely small risk of an engine flameout, which could result in a loss-of-control event, are adequate to ensure safety under all flight regimes. FedEx stated that, furthermore, the proposed modification does not increase the level of safety in real-world terms to sufficiently justify the relatively high financial and operational impact to its company.

We disagree with FedEx's request to withdraw this SNPRM. As stated previously, because we have received reports of two single-engine flameout events during inclement weather, this condition is unsafe and could result in reduced controllability of the airplane, especially at low altitude.

In regard to the Model MD–11 airplanes, those airplanes are not included in the applicability of this SNPRM; each engine installation is evaluated separately from other airplane models due to their installation differences. The actions specified in this SNPRM are not the same as the actions tied to the ice protection system described in FedEx's comment. Also, not all affected airplanes have FADEC-controlled engines installed. In addition, as noted previously, we consider a design solution that does not require pilot action to be a more robust mitigating action to address an unsafe condition.

Affected operators may request approval of an AMOC under the provisions of paragraph (i)(1) of this SNPRM by submitting data substantiating that the change would provide an acceptable level of safety. We have not changed this SNPRM in this regard.

Request To Withdraw the NPRM (77 FR 36211, June 18, 2012) Based on Financial Impact

FedEx requested that the NPRM (77 FR 36211, June 18, 2012) be withdrawn based on the financial impact it will have on its company. FedEx stated that it agrees with the FAA's estimates that the financial impact would be nearly $1 million to its company in material and labor, and it has concerns that the cost may in fact continue to increase. FedEx stated that to date, Airbus has revised the service information three times, and each of these revisions has increased the material costs of the modification. FedEx stated that the manpower requirements and lead time for the required parts have also increased significantly over the initial release of the service information. FedEx stated that it has elected to begin performing the modifications immediately upon release of the initial service information; therefore, it would have to return multiple times to perform additional work in order to meet the requirements of the subsequent revisions. FedEx stated that it does not have a high degree of confidence that the scope of this modification will not continue to increase and result in further cost and operational disruption.

We partially agree with the commenter. We disagree to withdraw this SNPRM based on the financial impact as we have received reports of two single-engine flameout events during inclement weather, as stated previously. This condition is unsafe and could result in reduced controllability of the airplane, especially at low altitude.

We agree, however, with FedEx that the estimated costs of compliance have increased with each service information revision. We have revised the Costs of Compliance paragraph of this SNPRM to reflect the updated costs in the latest service information.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the NPRM (77 FR 36211, June 18, 2012). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 47 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	Up to 98 work-hours × $85 per hour = $8,330.	Up to $18,417	$26,747	$1,257,109

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Amend § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2012–0636; Directorate Identifier 2012–NM–037–AD.

(a) Comments Due Date

We must receive comments by April 21, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A300 B4–601, B4–603, and B4–605R airplanes; Model A300 F4–605R airplanes, Model A300 C4–605R Variant F airplanes, and Model A310–204 and –304 airplanes; certificated in any category; all serial numbers; powered by General Electric (GE) CF6–80C2 series engines.

(d) Subject

Air Transport Association (ATA) of America Code 74, Ignition.

(e) Reason

This AD was prompted by reports of two single-engine flameout events during inclement weather. We are issuing this AD to prevent a long engine restart sequence after a non-selection of continuous relight by the crew and a flameout event of both engines, which could result in reduced controllability of the airplane, especially at low altitude.

(f) Compliance

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

(g) Modification

Within 6,000 flight hours or 30 months after the effective date of this AD, whichever occurs later: Modify the airplane by installing a shunt of the rotary selector (introducing an auto-relight function), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–74–6003, Revision 05, dated May 23, 2013 (for Model A300 B4–601, B4–603, and B4–605R airplanes, Model A300 F4–605R airplanes, and Model A300 C4–605R Variant F airplanes); or Airbus Mandatory Service Bulletin A310–74–2003, Revision 05, dated May 23, 2013 (for Model A310–204 and –304 airplanes).

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraphs (h)(1) and (h)(2) of this AD, and provided that the additional work in Airbus Mandatory Service Bulletin A300–74–6003, Revision 05, dated May 23, 2013; or Airbus Mandatory Service Bulletin A310–74–2003, Revision 05, including Appendix 1, dated May 23, 2013; is done, as required by paragraph (g) of this AD.

(1) For Model A300 B4–601, B4–603, and B4–605R airplanes, Model A300 F4–605R airplanes, and Model A300 C4–605R Variant F airplanes: Airbus Mandatory Service Bulletin A300–74–6003, Revision 04, dated January 9, 2013, which is not incorporated by reference.

(2) For Model A310–204 and –304 airplanes: Airbus Mandatory Service Bulletin A310–74–2003, Revision 04, dated January 9, 2013, which is not incorporated by reference.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent, or the Design Approval Holder with a State of Design Authority's design organization approval, as applicable). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to assure the product is airworthy before it is returned to service.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2011–0113, dated June 17, 2011, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2012–0636.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 19, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04853 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0129; Directorate Identifier 2013–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2011–15–09, which applies to certain Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes. AD 2011–15–09 currently requires repetitive inspections for proper operation of the main landing gear (MLG) alternate extension system (AES), and corrective actions if necessary. Since we issued AD 2011–15–09, we have determined that, for certain airplanes not affected by AD 2011–15–09, a different MLG AES cam mechanism assembly was installed resulting in input lever fractures and inability to open the MLG door; those assemblies could be subject to the same unsafe condition in AD 2011–15–09. This new proposed AD would require, for certain airplanes, new repetitive inspections for proper operation of the MLG AES, and corrective actions if necessary. This proposed AD would also require eventually replacing the MLG AES cam mechanism assembly with a new assembly, which would terminate the repetitive inspections for those airplanes. We are proposing this AD to prevent improper operation of the cam mechanism or rupture of the door release cable, which could result in loss of control of the airplane during landing.

DATES: We must receive comments on this proposed AD by April 21, 2014.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0129; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0129; Directorate Identifier 2013–NM–105–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On July 6, 2011, we issued AD 2011–15–09, Amendment 39–16756 (76 FR 42033, July 18, 2011). AD 2011–15–09 required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2011–15–09, Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–01R2, dated May 21, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Two cases of the main landing gear (MLG) alternate extension system (AES) cam mechanism failure were found during line checks. The cam mechanism operates the cable to open the MLG door and releases the MLG uplock in sequence. In the case where it is necessary to deploy the MLG using the AES, the failure of the MLG AES cam mechanism on one side will lead to an unsafe asymmetrical landing configuration.
>
> Preliminary investigation indicates that the cam mechanism failure may have occurred and remained dormant after a previous AES operation. The cam mechanism may not have fully returned to the normal rested position. With the cam mechanism out of normal rested position, normal powered landing gear door operation could introduce sufficient loads to fracture the cam mechanism or rupture the door release cable.
>
> This [Canadian] AD mandates the initial and subsequent [detailed] inspections for proper operation of the MLG AES cam mechanism, and rectify [repair or replace cam assembly with new or serviceable cam assembly] as necessary.
>
> Since the original issue of this [Canadian] AD, Bombardier Inc. has determined that the existing inspection procedure is insufficient for verification of proper MLG AES cam mechanism operation, and has superseded this inspection procedure. Revision 1 of this [Canadian] AD mandates the use of the revised inspection [and rectification] procedure.
>
> Prior to the introduction of MLG AES cam mechanism assembly part number (P/N) 48510–5 as terminating action, an interim MLG AES cam mechanism assembly P/N 48510–3 was introduced.
>
> Revision 2 of this [Canadian] AD updates the applicability paragraph, updates the MLG AES cam mechanism inspection criteria and mandates the terminating action.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0129.

Relevant Service Information

Bombardier has issued Repair Drawing 8/4–32–0160, Issue 5, dated June 6, 2012; and Issue 6, dated June 27,

2012. Bombardier has also issued Service Bulletin 84–32–100, Revision A, dated August 30, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Repair Approvals

In many FAA transport ADs, when the service information specifies to contact the manufacturer for further instructions if certain discrepancies are found, we typically include in the AD a requirement to accomplish the action using a method approved by either the FAA or the State of Design Authority (or its delegated agent).

We have recently been notified that certain laws in other countries do not allow such delegation of authority, but some countries do recognize design approval organizations. In addition, we have become aware that some U.S. operators have used repair instructions that were previously approved by a State of Design Authority or a Design Approval Holder (DAH) as a method of compliance with this provision in FAA ADs. Frequently, in these cases, the previously approved repair instructions come from the airplane structural repair manual or the DAH repair approval statements that were not specifically developed to address the unsafe condition corrected by the AD. Using repair instructions that were not specifically approved for a particular AD creates the potential for doing repairs that were not developed to address the unsafe condition identified by the MCAI AD, the FAA AD, or the applicable service information, which could result in the unsafe condition not being fully corrected.

To prevent the use of repairs that were not specifically developed to correct the unsafe condition, certain requirements of this proposed AD specify that the repair approval specifically refer to the FAA AD. This change is intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we use the phrase ''its delegated agent, or the DAH with State of Design Authority design organization approval, as applicable'' in this proposed AD to refer to a DAH authorized to approve certain required repairs for this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 75 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection in AD 2011-15-09, Amendment 39–16756 (76 FR 42033, July 18, 2011).	Up to 24 work-hours × $85 per hour = up to $2,040 per inspection cycle.	$2,609	Up to $4,649 per inspection cycle.	Up to $348,675 per inspection cycle.
Inspection [new proposed action].	1 work-hour × $85 per hour = $85 per inspection cycle.	$0	$85 per inspection cycle	$6,375 per inspection cycle.
Replacement of both cam assemblies [new proposed terminating action].	4 work-hours × $85 per hour = $680 [$340 per cam assembly].	$7,676 (2 cam assemblies)	$80,167	$601,200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Amend § 39.13 by removing airworthiness directive (AD) 2011–15–09, Amendment 39–16756 (76 FR 42033, July 18, 2011), and adding the following new AD:

Bombardier, Inc: Docket No. FAA–2014–0129; Directorate Identifier 2013–NM–105–AD.

(a) Comments Due Date

We must receive comments by April 21, 2014.

(b) Affected ADs

This AD supersedes AD 2011–15–09, Amendment 39–16756 (76 FR 42033, July 18, 2011).

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001, 4003 through 4418 inclusive, 4422 and 4423.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by a determination that a different MLG AES cam mechanism assembly was installed resulting in input lever fractures and inability to open the MLG door; those assemblies could be subject to the same unsafe condition in the existing AD. We are issuing this AD to prevent improper operation of the cam mechanism or rupture of the door release cable, which could result in loss of control of the airplane during landing.

(f) Compliance

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

(g) Retained Detailed Inspection for Proper Operation of the MLG

This paragraph restates the requirement in paragraph (i) of AD 2011–15–09, Amendment 39–16756 (76 FR 42033, July 18, 2011), with revised service information. For airplanes with a MLG AES Cam Mechanism Assembly having part number (P/N) 48510–1: Within 50 flight hours or 10 days after August 2, 2011 (the effective date of AD 2011–15–09, Amendment 39–16756 (76 FR 42033, July 18, 2011)), whichever occurs first, do a detailed inspection for proper operation of the MLG AES cam mechanism, in accordance with paragraph A) of Bombardier Repair Drawing 8/4–32–0160, Issue 3, dated February 15, 2011; or Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012. Repeat the inspection thereafter at intervals not to exceed 50 flight hours or 10 days, whichever occurs first. As of the effective date of this AD, use only Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012.

(1) If the cam mechanism is found to reset to the normal rested position without any sticking or binding, it is operating properly.

(2) If the cam mechanism has not reset to its normal rested position, or if any sticking or binding is observed, before further flight, remove the cam assembly, in accordance with paragraph A) of Bombardier Repair Drawing 8/4–32–0160, Issue 3, dated February 15, 2011; or Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012, and do the actions in paragraph (g)(2)(i) or (g)(2)(ii) of this AD. As of the effective date of this AD, use only Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012.

(i) Repair the cam mechanism assembly, including doing detailed inspections for discrepancies (an inspection to determine proper operation, an inspection for damage, an inspection for corrosion and cadmium coating degradation, and inspections to determine dimensions are within the limits specified in paragraph B) of Bombardier Repair Drawing 8/4–32–0160, Issue 3, dated February 15, 2011; or Bombardier Repair Drawing 8/4–32–0160 Issue 6, dated June 27, 2012, in accordance with paragraph B) of Bombardier Repair Drawing 8/4–32–0160, Issue 3, dated February 15, 2011; and install the repaired cam assembly in accordance with paragraph C) of Bombardier Repair Drawing 8/4–32–0160, Issue 3, dated February 15, 2011; or Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012. As of the effective date of this AD, use only Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012.

(ii) Install a new or serviceable cam assembly, in accordance with paragraph C) of Bombardier Repair Drawing 8/4–32–0160, Issue 3, dated February 15, 2011; or Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012. As of the effective date of this AD, use only Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012.

(3) If the cam mechanism is found damaged or inoperative during the repair specified in paragraph (g)(2)(i) of this AD, or if any discrepancies are found and Bombardier Repair Drawing 8/4–32–0160, Issue 3, dated February 15, 2011; or Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012; does not specify repairs for those discrepancies, or repairs specified in paragraph (g)(2)(i) of this AD cannot be accomplished: Before further flight, repair and reinstall using a method approved by the Manager, ANE–170, New York Aircraft Certification Office (ACO), FAA, or the TCCA (or its delegated agent, or the Design Approval Holder with TCCA's design organization approval, as applicable); or install a new or serviceable cam assembly, in accordance with paragraph C) of Bombardier Repair Drawing 8/4–32–0160, Issue 3, dated February 15, 2011; or Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012. As of the effective date of this AD, use only Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012, to install the cam assembly.

(h) New Inspection for Proper Operation of the MLG Replacement Part

For airplanes with a MLG AES cam mechanism assembly having P/N 48510–3: Within 1,800 flight hours or 9 months after installation of the assembly, whichever occurs first after the effective date of this AD, do a detailed inspection for proper operation of the MLG AES cam mechanism, in accordance with paragraph A) of Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012. Repeat the inspection thereafter at intervals not to exceed 600 flight hours or 3 months, whichever occurs first.

(1) If the cam mechanism is found to reset to the normal rested position without any sticking or binding, it is operating properly.

(2) If the cam mechanism has not reset to its normal rested position, or if any sticking or binding is observed, before further flight, remove the cam assembly, in accordance with paragraph A) of Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012, and do the actions required by paragraphs (h)(2)(i) or (h)(2)(ii) of this AD.

(i) Repair the cam mechanism assembly, including doing detailed inspections for discrepancies (an inspection to determine proper operation, an inspection for damage, an inspection for corrosion and cadmium coating degradation, and inspections to determine dimensions are within the limits specified in paragraph B) of Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012), in accordance with paragraph B) of Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012; and install the repaired cam assembly in accordance with paragraph C) of Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012.

(ii) Install a new or serviceable cam assembly, in accordance with paragraph C) of Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012.

(3) If the cam mechanism is found damaged or inoperative during the repair specified in paragraph (h)(2)(i) of this AD; or if any discrepancies are found and Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012, does not specify repairs for those discrepancies; or repairs specified in paragraph (h)(2)(i) of this AD cannot be accomplished: Before further flight, do the applicable actions required by paragraph (h)(3)(i) or (h)(3)(ii) of this AD.

(i) Repair and reinstall using a method approved by the Manager, ANE–170, New York ACO, FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent, or the Design Approval Holder with TCCA's design organization approval, as applicable).

For a repair method to be approved, the repair approval must specifically refer to this AD.

(ii) Install a new or serviceable cam assembly, in accordance with paragraph C) of Bombardier Repair Drawing 8/4–32–0160, Issue 6, dated June 27, 2012.

(i) New Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Repair Drawing 8/4–32–0160, Issue 5, dated June 6, 2012.

(j) New Terminating Action

Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, replace any MLG AES cam

mechanism assembly having P/N 48510–1 or P/N 48510–3 with a new MLG AES cam mechanism assembly having P/N 48510–5, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–100, Revision A, dated August 30, 2012. Accomplishing this replacement terminates the repetitive inspections required by this AD.

(k) New Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (j) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–32–100, dated August 15, 2012.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval, as applicable). You are required to ensure the product is airworthy before it is returned to service.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2011–01R2, dated May 21, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0129.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 26, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04887 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0126; Directorate Identifier 2013–NM–236–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model airplanes. This proposed AD was prompted by reports of latently failed fuel shutoff valves discovered during fuel filter replacement. This proposed AD would require revising the maintenance or inspection program to include new airworthiness limitations. We are proposing this AD to detect and correct latent failures of the fuel shutoff valve to the engine, which could result in the inability to shut off fuel to the engine and, in case of certain engine fires, an uncontrollable fire that could lead to wing failure.

DATES: We must receive comments on this proposed AD by April 21, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0126; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6509; fax: (425) 917–6590; email: *rebel.nichols@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0126; Directorate Identifier 2013–NM–236–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of latently failed fuel shutoff valves discovered during fuel filter replacement. Deficiencies in the valve actuator design have resulted in latent failures of the fuel shutoff valve to the engine. This condition, if not detected and corrected, could result in latent failures of the fuel shutoff valve to the engine, which could result in the inability to shut off fuel to the engine and, in case of certain engine fires, an uncontrollable fire that could lead to wing failure.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require revising the maintenance or inspection program to include new airworthiness limitations. The airworthiness limitations would allow an operator to perform the operational check as either a maintenance action or a flightcrew action. The flightcrew or maintenance crew would monitor the engine spar valve lights for a few seconds immediately after moving the engine fuel condition levers. Flightcrews can perform this operational check while starting the engine or while shutting down the engine. Maintenance crews can do this operational check as a separate action that does not require actual starting of the engine.

This proposed AD would require revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, an operator might not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) in accordance with the provisions of paragraph (i) of this proposed AD. The request should include a description of changes to the proposed inspections that will ensure the continued operational safety of the airplane.

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this proposed AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD affects 590 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Incorporating Airworthiness Limitation	1 work-hour × $85 per hour = $85	$0	$85	$50,150

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2014–0126; Directorate Identifier 2013–NM–236–AD.

(a) Comments Due Date

We must receive comments by April 21, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2823, Fuel Selector/Shut-off Valve.

(e) Unsafe Condition

This AD was prompted by reports of latently failed fuel shutoff valves discovered during fuel filter replacement. We are issuing this AD to detect and correct latent failures of the fuel shutoff valve to the engine, which could result in the inability to shut off fuel to the engine and, in case of certain engine fires, an uncontrollable fire that could lead to wing failure.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to add airworthiness limitation numbers 28–AWL–ENG and 28–AWL–APU, by incorporating the information specified in Figure 1 and Figure 2 to paragraph (g) of this AD into the Airworthiness Limitations Section of the Instructions for Continued Airworthiness. The initial compliance time for accomplishing the actions specified in Figure 1 and Figure 2 to paragraph (g) of this AD is within 7 days after accomplishing the

maintenance or inspection program revision required by this paragraph.

FIGURE 1 TO PARAGRAPH (g) OF THIS AD: ENGINE SHUT-OFF VALVE (FUEL SPAR VALVE) POSITION INDICATION OPERATIONAL CHECK

AWL No.	Task	Interval	Applicability	Description
28–AWL–ENG	ALI	DAILY	ALL	Engine Shut-Off Valve (Fuel Spar Valve) Position Indication Operational Check Concern: The MOV actuator design can result in airplanes operating with a failed MOV actuator that is not reported. A latently failed MOV actuator could prevent fuel shutoff to an engine. In the event of certain engine fires, the potential exists for an engine fire to be uncontrollable. Perform one of the following operational checks of the Fuel Spar Valve position indication (unless checked by the flight crew in a manner approved by the principal operations inspector): A. Operational Check during engine shutdown 1. Do an operational check of the left engine fuel spar valve actuator. a. As the L FUEL CONTROL switch on the quadrant control stand is moved to the CUTOFF position, verify the left SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. b. If the test fails (light fails to illuminate), before further flight, repair faults as required (refer to Boeing Airplane Maintenance Manual (AMM) 28–22–11). 2. Do an operational check of the right engine fuel spar valve actuator. a. As the R FUEL CONTROL switch on the quadrant control stand is moved to the CUTOFF position, verify the right SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. b. If the test fails (light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11). B. Operational check during engine start 1. Do an operational check of the left engine fuel spar valve actuator. a. As the L FUEL CONTROL switch on the quadrant control stand is moved to the RUN position, verify the left SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. b. If the test fails (light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11). 2. Do an operational check of the right engine fuel spar valve actuator. a. As the R FUEL CONTROL switch on the quadrant control stand is moved to the RUN position, verify the right SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. b. If the test fails (light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11). C. Operational check without engine operation 1. Make sure all fuel pump switches on the Overhead Panel are in the OFF position. 2. If the APU is running, open and collar the L FWD FUEL BOOST PUMP (C00372) circuit breaker on the Main Power Distribution Panel. 3. Make sure LEFT and RIGHT ENG FIRE switches on the Aft Aisle Stand are in the NORMAL (IN) position. 4. Make sure L and R Engine Start Selector Switches on the Overhead Panel are in the OFF position. 5. Do an operational check of the left engine fuel spar valve actuator. a. Move L FUEL CONTROL switch on the quadrant control stand to the RUN position and wait 10 seconds. NOTE: It is normal under this test condition for the ENG VALVE disagreement light on the quadrant control stand to stay illuminated. b. Move L FUEL CONTROL switch on the quadrant control stand to the CUTOFF position. c. Verify the left SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. d. If the test fails (light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11). 6. Do an operational check of the right engine fuel spar valve actuator. a. Move R FUEL CONTROL switch on the quadrant control stand to the RUN position and wait 10 seconds. NOTE: It is normal under this test condition for the ENG VALVE disagreement light on the quadrant control stand to stay illuminated. b. Move R FUEL CONTROL switch on the quadrant control stand to the CUTOFF position. c. Verify the right SPAR VALVE disagreement light on the quadrant control stand illuminates and then goes off. d. If the test fails, (light fails to illuminate), before further flight, repair faults as required (refer to Boeing AMM 28–22–11). 7. If the L FWD FUEL BOOST PUMP circuit breaker was collared in step C.2., remove collar and close.

FIGURE 2 TO PARAGRAPH (g) OF THIS AD: APU FUEL VALVE POSITION INDICATION OPERATIONAL CHECK

AWL No.	Task	Interval	Applicability	Description
28–AWL–APU	ALI	10 DAYS ..	ALL	APU Fuel Valve Position Indication Operational Check Concern: The MOV actuator design can result in airplanes operating with a failed MOV actuator that is not reported. A latently failed MOV actuator could prevent fuel shutoff to the APU. In the event of certain APU fires, the potential exists for an APU fire to be uncontrollable. Perform the operational check of the APU Fuel Valve position indication (unless checked by the flight crew in a manner approved by the principal operations inspector). A. Operational check of the APU Fuel Valve position indication 1. If the APU is running, unload and shut down the APU using standard practices. 2. Make sure the APU FIRE switch on the Aft Aisle Stand is in the NORMAL (IN) position. 3. Make sure there is at least 700 lbs (300 kgs) of fuel in the Left Main Tank. 4. Move APU Selector switch on the Overhead Panel to the ON position and wait 10 seconds. 5. Move APU Selector switch on the Overhead Panel to the OFF position. 6. Verify the APU FAULT light on the Overhead Panel illuminates and then goes off. 7. If the test fails (light fails to illuminate), before further flight requiring APU availability, repair faults as required (refer to Boeing AMM 28–25–11). NOTE: Dispatch may be permitted per MMEL 28–25–02 if APU is not required for flight.

(h) No Alternative Actions and Intervals

After accomplishment of the maintenance or inspection program revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO) FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Rebel Nichols, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6509; fax: (425) 917–6590; email: *rebel.nichols@faa.gov.*

Issued in Renton, Washington, on February 21, 2014.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–04898 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 32

[Docket No.: OJP (BJA) 1646]

RIN 1121–AA80

Public Safety Officers' Benefits Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Justice Programs (OJP) of the U.S. Department of Justice proposes this rule to amend the regulation that implements the Public Safety Officers' Benefits (PSOB) Act and associated statutes. Generally speaking, these laws provide financial support to certain public safety officers, or their survivors and families, when such officers die, or become permanently and totally disabled, as a result of line-of-duty injuries, or when they die of heart attacks or strokes sustained within statutorily-specified timeframes of engaging or participating in certain line-of-duty activity. The proposed rule would amend the implementing regulation in order to change the definition of ''Spouse.''

DATES: Written comments must be postmarked and electronic comments must be submitted on or before April 4, 2014. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: Please address all comments regarding this rule by U.S. mail, to: Hope Janke, Bureau of Justice Assistance (BJA), Office of Justice Programs, 810 7th Street NW., Washington, DC 20531; or by telefacsimile to (202) 354–4135. To ensure proper handling, please reference OJP Docket No. 1646 on your correspondence. Comments may also be sent electronically through *http://regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://regulations.gov* Web site. OJP will accept attachments to electronic comments in Microsoft Word, WordPerfect, or Adobe PDF formats only. The public's opportunity to comment through *http://regulations.gov* terminates at midnight Eastern Time on the day that the comment period closes. All comments received *via* U.S. mail, or an express mail carrier, must be postmarked on or before the day that the comment period closes.

FOR FURTHER INFORMATION CONTACT: Hope Janke, BJA, OJP, at (202) 514–6278, or toll-free at 1 (888) 744–6513.

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Information made available for public inspection includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want the agency to redact. Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online.

If you wish to submit confidential business information as part of your comment but do not wish it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, the agency may choose not to post that comment (or to only partially post that comment) on *http://www.regulations.gov.* Confidential business information identified and located as set forth above will not be placed in the public docket file, nor will it be posted online.

If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Background

The Public Safety Officers' Benefits (PSOB) Program (established pursuant to the Public Safety Officers' Benefits Act of 1976 proper and certain associated statutes, enacted in 2001) is administered by the Office of Justice Programs of the U.S. Department of Justice. The PSOB Program provides a one-time financial payment to the statutorily-eligible survivors (including ''spouse[s]'') of public safety officers who die as the direct and proximate result of (actual or presumed) traumatic personal injuries sustained in the line of duty, as well as educational assistance for their ''spouse[s]'' and certain of their children. Alternatively, the PSOB Program provides a one-time financial payment to public safety officers themselves who are permanently and totally disabled as the direct and proximate result of personal injuries sustained in the line of duty, as well as educational assistance for their ''spouse[s]'' and certain of their children.

Following the recent Supreme Court decision in *United States* v. *Windsor,* 570 U.S. ___(2013), OJP is proposing this rule to amend the regulatory definition of ''spouse'' under the program, at 28 CFR 32.3. The proposed rule would recognize, as a matter of federal law, a person who lawfully enters into a marriage in one jurisdiction as a ''spouse'' for purposes of the program, even when living in another jurisdiction, and without regard to what the law of that other jurisdiction may provide. Consonant with prior program regulations, however, an exception to this general rule would apply where there is credible evidence that more than one person may be the public safety officer's spouse. In such cases, the PSOB Program would look to the jurisdiction with the most significant interest in the marital status of the officer.

As provided in 42 U.S.C. 3796c–2, any final rule promulgated pursuant to the proposed rule would ''apply to any matter pending on, or filed or accruing after, the effective date'' of that final rule.

III. Regulatory Requirements

Executive Order 12866 and 13563—Regulatory Planning and Review

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The costs of implementing this proposed rule would be minimal, as it would impose no costs on state, local, or tribal governments, or on the private sector.

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

Executive Order 13132—Federalism

This proposed rule would not have substantial direct effects on the States, on the relationship between the federal government and the States, or on distribution of power and responsibilities among the various levels of government. The PSOB program statutes provide benefits to individuals and do not impose any special or unique requirements on States or localities. Therefore, in accordance with Executive Order No. 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) & (b)(2) of Executive Order No. 12988. Pursuant to section 3(b)(1)(I) of the Executive Order, nothing in this proposed rule or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this rule is intended to create any legal or procedural rights enforceable against the United States, except as the same may be contained within part 32 of title 28 of the Code of Federal Regulations.

Regulatory Flexibility Act

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: this proposed rule addresses federal agency procedures; furthermore, this proposed rule would make amendments to clarify existing regulations and agency practice concerning public safety officers' death, disability, and education benefits and would do nothing to increase the financial burden on any small entities. Therefore, an analysis of the impact of this proposed rule on such entities is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1995

This proposed rule would not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This proposed rule would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. The PSOB program is a federal benefits program that provides benefits directly to qualifying individuals. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Disability benefits, Education, Emergency medical services, Firefighters, Law enforcement officers, Reporting and recordkeeping requirements, Rescue squad.

Accordingly, for the reasons set forth in the preamble, part 32 of chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 32—PUBLIC SAFETY OFFICERS' DEATH, DISABILITY, AND EDUCATIONAL ASSISTANCE BENEFITS CLAIMS

■ 1. The authority citation for 28 CFR Part 32 continues to read as follows:

Authority: 42 U.S.C. ch. 46, subch. XII; 42 U.S.C. 3782(a), 3787, 3788, 3791(a), 3793(a)(4) & (b), 3795a, 3796c–1, 3796c–2; sec. 1601, title XI, Public Law 90–351, 82 Stat. 239; secs. 4 through 6, Public Law 94–430, 90 Stat. 1348; secs. 1 and 2, Public Law 107–37, 115 Stat. 219.

■ 2. Section 32.3 is amended by revising the definition of ''*Spouse*'' to read as follows:

§ 32.3 Definitions.

* * * * *

Spouse means someone with whom an individual entered into marriage lawfully under the law of the jurisdiction in which it was entered into and from whom the individual is not divorced, and includes a spouse living apart from the individual, other than pursuant to divorce, except that, notwithstanding any other provision of law, to determine whether an individual is a spouse of a public safety officer within the meaning of this definition when more than one individual is purported to be such a spouse, the PSOB Program will apply the law of the jurisdiction that it determines has the most significant interest in the marital status of the public safety officer:

(1) On the date of the officer's death, with respect to a claim under subpart B of this part or by virtue of such death; or

(2) As of the injury date, with respect to a claim not under subpart B of this part or by virtue of the officer's death.

* * * * *

Dated: February 21, 2014.

Karol V. Mason,

Assistant Attorney General.

[FR Doc. 2014–04647 Filed 3–4–14; 8:45 am]

BILLING CODE 4410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1999–0013; FRL–9907–49–Region 2]

National Oil and Hazardous Substance Pollution Contingency Plan National Priorities List: Deletion of the Federal Creosote Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region II is issuing a Notice of Intent to Delete the Federal Creosote Superfund Site located in Manville, New Jersey, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of New Jersey, through the New Jersey Department of Environmental Protection, have determined that all appropriate response actions under CERCLA, other than long-term groundwater monitoring and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by April 4, 2014.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1999–0013, by one of the following methods:

- *http://www.regulations.gov*. Follow on-line instructions for submitting comments.
- *Email: puvogel.rich@epa.gov:* Rich Puvogel, Remedial Project Manager, *seppi.pat@epa.gov*: Pat Seppi, Community Involvement Coordinator
- *Fax:* (212) 637–4429.
- *Mail:* Rich Puvogel, Remedial Project Manager, U.S. Environmental Protection Agency, Emergency & Remedial Response Division, 290 Broadway, 19th Floor, New York, NY 10007–1866.

or

Pat Seppi, Community Involvement Coordinator, U.S. Environmental Protection Agency, Public Affairs Division, 290 Broadway, 26th Floor, New York, NY 10007–1866.

- *Hand Delivery:* U.S. Environmental Protection Agency, Emergency & Remedial Response Division, 290 Broadway, 19th Floor, New York, NY 10007–1866.

Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1999–0013. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket

All documents in the docket are listed in the *http://www.regulations.gov* index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, (212) 637–4308, Hours: 9:00 a.m. to 5:00 p.m., Monday Through Friday;

and at

Manville Public Library, 100 South 10th Avenue, Manville, New Jersey 08835, (908) 722–9722.

Hours:

Mon. through Fri.: 10:00 a.m. to 8:00 p.m.
Fri.: 10:00 a.m. to 5:30 p.m.
Sat.: 10:00 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT:

Rich Puvogel, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–4410

or

email puvogel.rich@epa.gov.

SUPPLEMENTARY INFORMATION:

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

I. Introduction

EPA Region II announces its intent to delete the Federal Creosote Superfund Site (Site) from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Federal Creosote Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

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

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

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

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

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

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State before developing this Notice of Intent to Delete;

(2) EPA has provided the State 30 working days for review of this notice prior to publication of it today;

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

(4) The State of New Jersey, through the New Jersey Department of Environmental Protection (NJDEP), has concurred with deletion of the Site from the NPL;

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, the New Jersey Courier News. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the site from the NPL.

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

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the Site information repositories listed above.

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

IV. Basis for Site Deletion

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

Site Background and History

The Federal Creosote Superfund Site, CERCLIS ID NJ0001900281, is located in the Borough of Manville, Somerset County, New Jersey. The 50-acre Site is bordered to the west by commercial properties that line the east side of Main Street. To the north, on the opposite side of the Norfolk Southern railroad tracks, are a variety of commercial and retail establishments, including automobile storage, warehousing, and large retail stores. To the south, on the opposite side of the CSX Transportation

tracks, is a primarily residential area known as Lost Valley. Approximately 5,000 people live within a one-mile radius of the Site. Currently, drinking water for the surrounding area is provided by a public water supply and no private drinking water wells are used.

The Site is divided into two land uses: Residential (35 acres) and commercial (15 acres). The land use in the Claremont Development is strictly residential, consisting of 129 single-family residential houses which are home to approximately 350 residents. The current land use of the Rustic Mall portion of the Site is zoned commercial. The Borough of Manville and the property owner are planning revitalization of the commercial property, which includes a combination of commercial and residential use.

The 50-acre Site was used to treat railroad ties with coal tar creosote prior to development into the land uses described above. Beginning in approximately 1910, the Site was operated by a company known as the Federal Creosoting Company. During the operations, untreated railroad ties were delivered to the Site by rail and were processed in a treatment plant located on the southwest western portion of the Site. Coal-tar creosote was applied to the railroad ties in this area. Treatment residuals from the plant were discharged into two unlined canals. Subsurface piping and a surface canal conveyed the flow of the treatment residuals to the northern portion of the property for a combined distance of approximately 1,200 feet, where the waste spilled into an unlined lagoon. The other canal directed the flow of treatment residuals toward the southern portion of the property, where the contents of this canal flowed into another unlined lagoon located approximately 1,500 feet from the treatment plant. After treatment, railroad ties were moved from the plant to the central portion of the property, referred to as the drip area, where the excess creosote dripped from the treated wood onto the ground. Creosoting material and contaminated soil associated with the wood treating facility were not removed prior to construction of the Claremont Development and Rustic Mall.

Land use patterns on the Federal Creosoting Company property remained the same until the mid-1950s, when the wood treatment plant ceased operations and was dismantled. During the early through mid 1960s the property was re-developed. The area that formerly housed the treatment plant was developed into the 15-acre Rustic Mall containing a mixture of commercial and retail establishments. The remaining 35 acres of the former Federal Creosoting Company property, including the drip area, canals and lagoons, were developed into the Claremont Development.

In April 1996, NJDEP responded to an incident involving the discharge of an unknown liquid from a sump located at one of the Claremont Development residences on Valerie Drive. A thick, tarry substance was observed flowing from the sump to the street. In January 1997, the Borough of Manville responded to a complaint that a sinkhole had developed around a sewer pipe in the Claremont Development along East Camplain Road. Excavation of the soil around the pipe identified a black tar-like material in the soil. Subsequent investigations of these areas revealed elevated levels of contaminants consistent with creosote.

Following the discovery of this material, NJDEP, with technical assistance from EPA, began an investigation of the Site. In April and May 1997, air samples were collected inside the majority of homes in the Claremont Development. With the exception of one house, the analysis of these samples indicated that the Site-related contaminants were not present in indoor air at elevated levels.

In October 1997, EPA's Environmental Response Team initiated a Site investigation on properties believed to contain creosote contamination based on analysis of historical aerial photographs, as well as input from residents. Over 100 surface and subsurface soil samples were collected. These sampling results indicated that the canals and lagoons still existed beneath the Claremont Development, and that the contamination was extensive.

In July 1998, EPA initiated a removal action at 11 residential properties to temporarily cover areas that contained higher surface soil levels of carcinogenic polycyclic aromatic hydrocarbons (PAHs) in exposed surface soils. As an interim action, sod was placed over bare areas in lawns and mulch was placed over exposed soils in garden beds.

The Site was proposed for the NPL on July 28, 1998 (63 FR 40247), and was formally placed on the NPL on January 19, 1999 (64 FR 2942).

Engineering Evaluation/Cost Analysis and Remedial Investigation/Feasibility Studies

EPA conducted an engineering evaluation/cost analysis (EE/CA) utilizing the results of sampling initiated in October 1997. The EE/CA was conducted for the first operable unit (OU1) of the Site, which consisted of the creosote source areas (subsurface canals and lagoons) located in the residential development, and evaluated options for the removal of these source areas. The EE/CA was completed in April 1999, and a Record of Decision (ROD) for OU1 was signed on September 28, 1999.

Under the remedial investigation/feasibility study (RI/FS) process, EPA conducted a focused feasibility study (FFS) for operable unit two (OU2), which consisted of residual levels of creosote contamination in surface and subsurface soil within the residential development. The FFS determined the nature and extent of residual soil contamination within the development and identified remedial alternatives to address contaminated soil. The FFS found that soils contained residual levels of creosote components, PAHs, in the majority of the residential property soils. The RI/FS was completed in April 2000 and a ROD for OU2 was signed on September 29, 2000.

EPA conducted an FFS for operable unit 3 (OU3) to determine the extent of subsurface soil contamination on the commercial portion of the Site, the nature and extent of site-wide groundwater contamination, and to provide remedial alternatives to address these media. The FFS for groundwater was completed in June 2001, and the FFS for the commercial property soils was completed in August 2001. A ROD for OU3 was signed on September 30, 2002.

Selected Remedy

The OU1 ROD, signed in 1999, established the following remedial action objectives (RAOs) for OU1:

- Clean up the canal and lagoon source areas to levels that will allow for unrestricted land use; and
- Remove as much source material as possible in order to minimize a potential source of groundwater contamination.

The OU1 remedy included:

- Permanent relocation of residents from certain properties within the canal and lagoon source areas, and temporary relocation, where necessary, to implement the remedy;
- Excavation of source material from the canal and lagoon source areas, backfilling with clean fill, and property restoration as necessary; and
- Transportation of the source material for off-site thermal treatment and disposal.

The OU2 ROD, signed in September 2000, established the following RAOs:

- Prevent human exposure, via direct contact, with contaminated soils,

considering the current and future residential site use;

• Prevent future impacts to underlying groundwater quality by contaminated soils;

• Prevent exposure and minimize disturbance to the Claremont Development residents, and the surrounding community of Manville, during implementation of the remedial action.

The OU2 remedy included:

• Excavation of soils containing PAHs in excess of site-specific remediation goals from an estimated approximately 82 properties, backfilling with clean fill, and property restoration as necessary, and

• Transportation of the contaminated soil off site for disposal, with treatment as necessary.

The OU3 ROD, signed in September 2002, established the following RAOs for soils and groundwater:

• Prevent human exposure via direct contact, inhalation, and ingestion of contaminated soils, considering the future potential residential site use;

• Prevent future impacts to underlying groundwater quality by contaminated soils that can act as a continuing source of groundwater contamination; and

• Prevent exposure and minimize disturbance to the Rustic Mall occupants and consumers, and the surrounding community of Manville, during implementation of the remedial action.

• Prevent ingestion and direct contact with groundwater that has contaminant concentrations greater than the applicable or relevant and appropriate requirements (ARARs);

• Minimize the potential for additional off-site migration of groundwater with contaminant concentrations that exceed the ARARs;

• Minimize the potential for transfer of groundwater contamination to the other media (e.g., surface water) at concentrations in excess of ARARs.

The OU3 soil remedy included:

• Excavation of soils containing polycyclic aromatic hydrocarbons (PAHs) in excess of site-specific remediation goals on the Rustic Mall, backfilling with clean fill, and property restoration as necessary; and,

• Transportation of the contaminated soil off site for disposal, with treatment as necessary.

As described in more detail in the decision summaries of the OU2 and OU3 RODs, the selected remedy would leave residual levels of PAHs (but not source material as defined by the September 1999 Record of Decision) at depths greater than approximately 14 feet below the ground surface in the Rustic Mall. The backfilled clean fill would act as a barrier or ''engineering control'' to prevent contact with any residual contamination. In addition, a deed notice would be required to prevent direct contact with any remaining residual soil contamination.

The OU3 groundwater remedy included:

• Implementation of a long-term groundwater sampling and analysis program to monitor the concentrations of creosote components in the groundwater at the site, to assess the migration and attenuation of the creosote in groundwater over time; and,

• Institutional controls to restrict the installation of wells and the use of groundwater in the vicinity of the contaminated groundwater.

The evaluation of remedial alternatives for remediation of the dense nonaqueous phase liquid creosote contamination, including contamination found in the fractured bedrock aquifer, concluded that no practicable alternatives could be implemented. As a result, EPA invoked an ARAR waiver for the groundwater at this site due to technical impracticability (TI). The area for the TI waiver covers approximately 119 acres. The area includes three distinct subareas: The north off-site subarea, the on-site subarea, and the south off-site subarea. The TI waiver includes both the overburden aquifer and the bedrock aquifer within the area. The contaminants for which the ARAR waiver apply include: Acenaphthene, benzene, naphthalene, 2,4-dimethyl phenol, benzo(a) anthracene, benzo(a)pyrene, benzo(k) fluoranthene, fluorine, chrysene, benzo(b)fluoranthene, and indeno(l,2,3-cd)pyrene.

Two Explanations of Significant Differences (ESDs) were prepared to document significant changes to components of the selected remedies. The first ESD provided an explanation of the increase in the estimated costs for the OU1, OU2 and OU3 remedies. A second ESD provided an explanation of the application of institutional controls, in some circumstances, at depths shallower than anticipated in the OU2 ROD.

Response Actions

The design criteria consisted of the removal of creosote waste and soils saturated with creosote waste. In addition, design criteria also specified that contaminated soils exceeding the analytical cleanup goals (CGs) would be removed to a depth of approximately 14 feet and transported offsite for treatment and/or disposal according to the RCRA Land Disposal Requirements. These site-specific CGs consisted of seven PAHs, which are the primary contaminants of concern.

As noted above, the Site was broken into three OUs. The OU1 remedial action included removal of source material from 29 residential properties, required the permanent relocation of 21 OU1 property owners, and the demolition of 18 homes.

OU1 remedial action activities were conducted pursuant to the 1999 ROD. The U.S. Army Corps of Engineers (USACE) provided oversight during all remedial activities. USACE contracted Cape Environmental, Inc., and Sevenson Environmental Services (SES), Inc., to complete the remedial actions in accordance with the contract documents and all applicable state and federal regulations.

In October 2000, USACE's demolition contractor, Cape Environmental, Inc., mobilized equipment at the Federal Creosote Site to begin demolition of residential houses located above or adjoining creosote waste lagoons and canals. In December 2000, USACE's remediation contractor, SES mobilized on Site.

The cleanup of OU1 was divided into three phases. Phase 1 focused on the cleanup of the southern lagoon; Phase 2 focused on the cleanup of the northern lagoon and canal; and Phase 3 cleanup efforts were focused on the southern canal.

The OU1 Phase 1 remedial action involved temporary relocation of one family, the purchase of eight residential properties and permanent relocation of the residents, demolition of eight single-family homes, and excavation and removal of 64,500 tons of soil from the southern lagoon area to off-site treatment and disposal facilities. Soil requiring treatment was sent to an off-site hazardous waste incinerator in Canada; soils requiring subtitle C disposal were sent to a hazardous waste landfill in New York State. Remediation of Phase 1 was completed in June 2002. Ownership of these eight properties was transferred from EPA to NJDEP in July 2003. NJDEP sold these properties through public auction in the summer of 2009.

The OU1 Phase 2 remedial action included the acquisition of eight residential properties and the permanent relocation of residents from the eight properties located over the northern lagoon and canal. The houses on the eight lots were demolished and excavation of creosote-contaminated soil from this northern lagoon and canal started in April 2002. Excavation on this phase reached a depth of 35 feet below

the ground surface. Approximately 115,600 tons of soil were excavated and shipped off site to treatment and disposal facilities. These properties have been backfilled with clean soil and have been restored. EPA currently owns the eight lots and has placed the properties up for sale.

OU1 Phase 3 remedial action included the excavation and off-site disposal of 30,600 tons of contaminated soil from 13 residential properties and roadways located on the buried southern creosote canal. OU1 Phase 3 included the temporary relocation of three families, the purchase of five residential properties built over a portion of the buried southern creosote waste canal, permanent relocation of residents from the five properties and the demolition of two properties. After remediation and restoration, all of the OU1 Phase 3 properties purchased by EPA were sold and returned to residential use.

The remedial action objectives for the OU2 remedy were: To prevent human exposure via direct contact with contaminated soils, considering current and future residential use; prevent future impacts to underlying groundwater quality by contaminated soil; and prevent exposure and minimize disturbance to the Claremont Development residents, and the surrounding community during the implementation of the remedial action.

The remediation of OU2 was divided into two phases. The OU2 Phase 1 remedial action consisted of soil removal at 14 residential properties that surrounded the southern lagoon area. The OU2 Phase 1 remedial action involved no permanent relocations and no demolitions. The remedial action of this phase started in February 2002. By June 2002, 9,000 tons of soil had been excavated, treated and/or disposed off site; the 14 properties were completely restored, and temporarily relocated residents returned to their homes.

The OU2 Phase 2 remediation began in June 2003. Cleanup activities occurred on 50 residential properties and portions of residential roadways. The OU2 Phase 2 remedial action involved two permanent relocations and no building demolitions. The remediation of a day care center was included in this phase. In August 2001, the day care center playground was remediated and in 2006, the day care center parking lot was remediated. The remedial action of OU2 Phase 2 resulted in the excavation and off-site disposal (with treatment as necessary) of 59,000 tons of soil.

Remediation of OU3 soils began in August 2005. After excavation was started by EPA, the Rustic Mall owners demolished all buildings on their property except for a bowling alley. EPA excavated creosote waste found below the footprints of the former Rustic Mall buildings. Source material and residual levels of creosote were excavated from the Mall property. Approximately 178,000 tons of soil were excavated and shipped off site for treatment and/or disposal. The excavation of the Mall was completed in November 2007.

The first round of annual long-term monitoring of Site groundwater started in November 2005, as required by the OU3 ROD. Levels of PAHs in groundwater have, in general, declined when compared to the initial groundwater sampling performed prior to the remediation of the source areas.

Cleanup Goals

The Remedial Action Reports for OU1 Phase 1 dated July 2005, OU1 Phase 2 dated August 2008, OU1 Phase 3 dated August 2006, OU2 Phase 1 dated July 2005, OU2 Phase 2 dated August 2008 and OU3 dated August 2008 found that the construction activities at the Site were consistent with the approved construction plans (Design Reports, Site Management Plan, Sampling Analysis and Monitoring Plan, Perimeter Air Monitoring Plan, De-watering Plan, Waste Management Plan, Excavation and Handling Plan, Health and Safety Plan, and Quality Assurance Project Plan).

The remedial action provided for a rigorous sampling and analysis program. Specifically, sampling was required and implemented to protect on-site residents and on-site workers, and to confirm compliance with RAOs. Daily real-time air monitoring was conducted within the perimeter of the remediation area to detect and quantify total volatile organic compounds and respirable particulates. In addition, confirmatory soil samples were taken for Site contaminants wherever additional contamination was suspected or known to occur. Soil samples were also obtained for backfill before placement into excavated areas.

In addition to air and soil sampling conducted during all phases of the remediation, the OU3 ROD called for long-term groundwater monitoring. The objective of the long-term groundwater monitoring is to assess the migration and attenuation of creosote in groundwater over time.

Operation and Maintenance

Operation, maintenance and monitoring activities at the site include: Maintenance of eight EPA-acquired residential properties; sale of the eight remaining EPA-acquired residential properties; maintenance of the institutional controls; long-term, on-site and off-site groundwater monitoring; and adjustments and/or modifications to the groundwater monitoring systems.

As part of the monitoring program, groundwater will continue to be sampled to monitor plume properties, including its extent over time to verify that the plume will not increase or pose an unacceptable risk to human health and the environment.

Institutional controls have been applied to the groundwater and, where appropriate, soils at the Site.

The OU3 ROD required the establishment of a Classification Exception Area (CEA) for the area of groundwater contamination. The CEA was established to provide notice that the constituent standards for a class IIA aquifer classification are not or will not be met in the area of the Federal Creosote Site and that designated aquifer uses are suspended in the affected area for the term of the CEA. Additional monitoring wells were installed to delineate the CEA, and the CEA was established in January 2010.

Deed notices were applied at the Site to prevent exposure to residual contaminants in soils that were not excavated as part of the remediation. The OU2 ROD anticipated the use of deed notices on 23 properties where residual contamination (not source material) was left at depths greater than approximately 14 feet. As documented in the 2008 ESD, the implemented remedy differed from the ROD by use of deed notices at a number of properties where residual contamination remained between two feet and 14 feet in depth. Residual contamination was not removed between these depths in order to preserve the structural integrity of houses.

During the implementation of the remedy, all source material encountered in the residential development was removed and residual contamination above cleanup goals was left beneath 21 properties. All 21 residential property owners applied deed notices to their properties where residual contamination remained at levels exceeding the remedial goals established for the Site. Consistent with the expectations of the ROD, deed notices were applied to six properties where residual contamination remains below approximately 14 feet. The remaining 15 properties requiring deed notices have residual contamination shallower than 14 feet. The residual contamination remains at depths that are inaccessible through normal residential activities. Property owners are required to maintain the property in

a manner that ensures the deed notice continues to be protective. NJDEP is to conduct biennial inspections and certify the continued protectiveness of all residential properties containing deed notices.

A deed notice was required on Borough of Manville roads and right-of-ways that contained residual contamination at levels exceeding the remedial goals established for the Site. The Borough has applied deed notices to all areas that were required.

A deed notice was also required on the Rustic Mall commercial property. The owners have applied a deed notice to this property in accordance with the remedy selected in the OU3 ROD. The commercial property owner is responsible to conduct biennial inspections and provide certification to NJDEP that specifications of the deed notice continue to be protective.

Five-Year Review

Hazardous substances, pollutants, or contaminants will remain at the Site above levels that allow for unlimited use and unrestricted exposure. In accordance with CERCLA Section 121 (c), the remedies at the Site will be reviewed no less than every five years. The first five-year review was completed in June 2007. A second five-year review was completed on May 3, 2012. This second five-year review determined that the implemented actions at the Site currently protect human health and the environment because soil excavation activities and institutional controls prevent direct exposure to contaminated soils. EPA will complete the next five-year-review prior to May 3, 2017.

Community Involvement

A very high level of community concern was demonstrated by residents, commercial property owners, business owners, and borough officials at the time the Site was discovered in 1997. This level of community concern persisted to the completion of cleanup activities in 2008.

Initially, public meetings were used to convey information to the community. At these meetings, residents were informed of plans for indoor air sampling and soil sampling on their properties. As results of the sampling events were produced, EPA held public availability sessions in which EPA representatives met with residents one-on-one to discuss the sampling results. As with the public meetings, these public availability sessions were well attended and preferred by many members of the community. A Community Advisory Group (CAG) was formed early on in the project. The CAG obtained information from EPA and provided community input on the implementation of field activities associated with investigations, design and remedial construction. As the project moved through the remedial investigation to the remedial design and remedial action, the on-site presence of equipment and contractor personnel associated with these activities gained higher visibility and became more intrusive to the community. EPA distributed informational fact sheets to property owners immediately before field activities were to take place in any area of the community. The fact sheets informed the community of Site activities such as utility mark-offs, road closures, equipment to be used for upcoming work, number of personnel involved in the work and the duration of the work as well as upcoming meetings. In addition, EPA distributed periodic newsletters informing the community of cleanup progress and plans for future cleanup activities. EPA held multiple interviews with different media (newspaper, television and radio news) to report on progress of the Site investigation and cleanup activities. Press events were also held to announce major milestones of the project. Meeting one-on-one with residents at their homes was a critical component of community relations activities at this Site. A wide range of issues were addressed at these meetings such as access agreements, property specific plans for upcoming environmental testing and remediation, interpretation of sampling results, permanent and temporary relocation assistance, and resident's concerns regarding intrusive remediation of their properties.

A notice will be published in the local newspaper informing the public of EPA's intent to delete the Site. This public notice will request public comment on the proposed deletion and provide EPA's point of contact to accept comments.

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

All response actions required in each of the RODs have been completed and all remedial action objectives have been met. One of the three criteria for Site deletion specifies that EPA may delete a site from the NPL if all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate. EPA, with the concurrence of the State of New Jersey Department of Environmental Protection, believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the docket.

List of Subjects in 40 CFR Part 300

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

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

Dated: January 31, 2014.

Judith Enck

Regional Administrator, Region 2.

[FR Doc. 2014–04885 Filed 3–4–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 162

[CMS–0037–N]

Administrative Simplification: Certification of Compliance for Health Plans; Extension of Comment Period

AGENCY: Office of the Secretary, HHS.

ACTION: Proposed rule; extension of the comment period.

SUMMARY: This document extends the comment period for the Administrative Simplification: Certification of Compliance for Health Plans proposed rule, which was published in the January 2, 2014 **Federal Register**. The comment period for the proposed rule, which would have ended on March 3, 2014, is extended to April 3, 2014.

DATES: The comment period for the proposed rule published in the January 2, 2014 **Federal Register** (79 FR 298) is extended to April 3, 2014.

ADDRESSES: In commenting, please refer to file code CMS–0037–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0037–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0037–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

FOR FURTHER INFORMATION CONTACT: Geanelle G. Herring, (410) 786–4466. Matthew Albright, (410) 786–2546.

SUPPLEMENTARY INFORMATION: In the January 2, 2014 **Federal Register** (79 FR 298), we published the Administrative Simplification: Certification of Compliance for Health Plans proposed rule (hereafter, Compliance Certification proposed rule), which proposes that controlling health plans must submit certain information and documentation that demonstrates compliance with the standards and operating rules adopted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) for three electronic transactions: Eligibility for a health plan, health care claim status, and health care electronic funds transfers (EFT) and remittance advice. This proposed rule would also establish penalty fees for a CHP that fails to comply with the certification of compliance requirements.

The proposed rule is different from previous HIPAA administrative simplification regulations in that the number and type of entities that would be impacted by the requirements is much greater. For example, many self-funded health plans that meet the HIPAA definition of health plan would be subject to the requirements in the proposed rule; however, many self-funded health plans have not been impacted by previous HIPAA administrative simplification requirements because many do not directly conduct HIPAA covered transactions.

Representatives of entities that are new to HIPAA administrative simplification requirements have requested more time to analyze the Compliance Certification proposed rule and educate themselves and their peers, as well as solicit feedback from their membership on the business impact of the propose rule, which they believe can be better achieved with more time for public comments. We concur. Therefore, we are extending the comment period until April 3, 2014.

Dated: February 27, 2014.

Oliver A. Potts,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2014–04828 Filed 2–28–14; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[PS Docket No. 10–255 and PS Docket No. 11–153; FCC 14–6]

Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this Second Further Notice of Proposed Rulemaking (*Second Further Notice*) the Federal Communications Commission (Commission) seeks comment on a proposed timeframe and several aspects of implementation of text-to-911 service, particularly relating to the technical ability of interconnected text providers to comply with a text-to-911 mandate. Specifically, the Commission seeks comment on a proposal that text-to-911 capability should be made available by all text providers no later than December 31, 2014, and should be provided within a reasonable time after a PSAP has made a valid request for service, not to exceed six months. The Commission also seeks further comment on several issues that we anticipate will be part of the long-term evolution of text-to-911, though it does not propose to require their implementation by a date certain. These include: Developing the capability to provide Phase II-comparable location information in conjunction with emergency texts; delivering text-to-911 over non-cellular data channels; and supporting text-to-911 for consumers while roaming on Commercial Mobile Radio Service (CMRS) networks. The *Second Further Notice* is adopted with the goal of obtaining information from the public on proposed rules for the implementation of text-to-911.

DATES: Submit comments on or before April 4, 2014 and reply comments by May 5, 2014. 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 5, 2014.

ADDRESSES: You may submit comments, identified by PS Docket No. 10–255 and PS Docket No. 11–153, by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Parties wishing to file materials with a claim of confidentiality should follow

the procedures set forth in § 0.459 of the Commission's rules. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary's Office following the procedures set forth in 47 CFR 0.459. Redacted versions of confidential submissions may be filed via ECFS.

FOR FURTHER INFORMATION CONTACT: Timothy May, Public Safety and Homeland Security Bureau, (202) 418–1463 or *timothy.may@fcc.gov*. For additional information concerning the proposed Paperwork Reduction Act information collection requirements contained in this document, contact Benish Shah (202) 418–7866, or send an email to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking, FCC 14–6; PS Docket Nos. 10–255 and 11–153; adopted on January 30, 2014 and released January 31, 2014. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554, or online at *http://www.fcc.gov/document/text-911-policy-statement-and-second-fnprm*.

This document will also be available at ECFS at *http://fjallfoss.fcc.gov/ecfs*. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format) by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) (202) 418–0432 (TTY).

Summary of the Second Further Notice of Proposed Rulemaking

I. Introduction

1. One of the core missions of the Federal Communications Commission is promoting the safety of life and property of the American public through the use of wire and radio communications. Consistent with that overarching obligation, the Commission has specific statutory responsibilities with respect to 911 service. As mobile wireless communications are becoming increasingly central to the day-to-day lives of Americans, a growing percentage of 911 calls originate on wireless networks (one study found that 75 percent of 911 calls in California came from wireless phones). At the same time, current trends in mobile wireless usage have shown continued evolution from a predominantly voice-driven medium of communication to one based more on data transmissions; for example, from 2009 to 2011, average minutes of use per subscriber per month, a measure of voice usage, continued to decline, while U.S. mobile data traffic increased 270 percent from 2010 to 2011, having more than doubled each year. In light of these trends and the importance of ensuring effective 911 service—particularly for those who cannot access 911 call centers with a voice call—and as articulated in the Commission's Report to Congress and Recommendations on a Legal Framework for Next Generation 911 Services (*NG911 Report*), we believe that text-to-911 capability is a necessary first step in the development of Next Generation (NG) 911 capabilities.

2. At the broadest level, access to 911 is a core value that translates across communications platforms, including text applications, and should not be lost or devalued as technology changes. In 2011, the Commission adopted a Notice of Proposed Rulemaking to bridge the gap between the habits and needs of the texting public and the services supported by wireless carriers and interconnected text providers.[1] In 2012, the Commission adopted a Further Notice of Proposed Rulemaking, proposing a framework to ensure that all consumers would be able to send emergency texts to 911 regardless of the texting service provider they use.[2]

3. This Second Further Notice of Proposed Rulemaking (*Second Further Notice*) seeks further comment on the proposed timeframe and several aspects of implementation, particularly relating to the technical ability of interconnected text providers to comply with a text-to-911 mandate. We also seek further comment on several issues that we anticipate will be part of the long-term evolution of text-to-911, though we do not propose to require their implementation by a date certain. These include: (1) Developing the capability to provide Phase II-comparable location information in conjunction with emergency texts; (2) delivering text-to-911 over non-cellular data channels; and (3) supporting text-to-911 for consumers while roaming on CMRS networks.

4. In seeking additional information in this *Second Further Notice,* we recognize that there is already a robust record on many of the issues and proposals that were presented in both the *2011 Notice* and the *2012 Further Notice*. In posing these further questions, we seek to supplement the record as to the specific issues identified herein.

II. Background

5. Americans are increasingly relying on text as an alternative to voice for everyday communications. In general, ''text messaging'' refers to any service that allows a mobile device to send information consisting of text to other mobile devices by using domestic telephone numbers. Examples of text messaging include Short Message Service (SMS), Multimedia Messaging Service (MMS), and ''interconnected text'' applications. SMS is a text messaging service component of communications systems that uses standardized communications protocols to enable wireless and fixed devices to exchange messages no longer than 160 characters. MMS is a standard way to exchange messages that include multimedia, such as photos and videos along with text, between wireless devices. ''Interconnected text'' applications use IP-based protocols to deliver text messages to a service provider and the service provider then delivers the text messages to destinations identified by a telephone number, using either IP-based or SMS protocols.

6. Current reports indicate that 91 percent of American adults own a cell phone, and that of those cell-phone owning consumers, 81 percent use their phones to send and receive text messages. Texting ''continues to be one of the most prevalent cell phone activities of all time'' and is particularly ubiquitous among younger cell phone users. The median number of texts sent by those 12–17 years of age in 2011 was 60 text messages per day, with 63 percent of teens indicating texting as a daily activity.

7. Moreover, ''over-the-top'' (OTT) texting applications are growing increasingly popular and have already eclipsed short messaging service (SMS) text messages provided by wireless carriers in terms of volume.[3] ''Over-the-

[1] In the Matter of Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment, PS Docket No 11–153, PS Docket No. 10–255, *Notice of Proposed Rulemaking,* 26 FCC Rcd 13615 (2011) (*2011 Notice*).

[2] In the Matter of Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, Framework for Next Generation 911 Deployment, PS Docket No 11–153, PS Docket No. 10–255, *Further Notice of Proposed Rulemaking,* 26 FCC Rcd 15659 (2012) (*2012 Further Notice*).

[3] *See* Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, PS Dockets No. 11–153, 10–255, *Report and Order,* 28 FCC Rcd 7556 (2013) (*Bounce-Back Order*).

top'' generally refers to applications that operate on Internet protocol (IP)-based mobile data networks and that consumers can typically install on data-capable mobile devices. In contrast, SMS requires use of an underlying carrier's SMS Center (SMSC) to send and receive messages from other users. MMS-based messaging makes use of the SMSC but also involves the use of different functional elements to enable transport of the message over IP networks. Over-the-top text applications enable consumers to send text messages using SMS, MMS or directly via IP over a data connection to dedicated messaging servers and gateways. Over-the-top texting applications may be provided by the underlying mobile wireless provider or a non-affiliated third-party, and may be ''interconnected'' or ''non-interconnected.'' In mid-2013, one third-party text messaging application reported more than 250 million active users, transmitting more than 18 billion messages per day. In mid-2013, the six most popular mobile chat applications averaged nearly 19 billion messages each day, compared to 17.6 billion SMS messages. In 2014, one report projected that over the top text messaging will outpace SMS text messaging by 50 billion to 21 billion.

8. In September 2011, the Commission released the *2011 Notice,* which sought comment on a number of issues related to the deployment of Next Generation 911 (NG911), including how to facilitate the deployment of text-to-911. In the *2011 Notice,* the Commission observed that sending text messages, photos, and video clips has become commonplace for users of mobile devices on 21st century broadband networks, and that adding non-voice capabilities to our 911 system will significantly improve emergency response, save lives, and reduce property damage. Moreover, the Commission stated that incorporating text and other media into the 911 system will benefit: (1) The public in terms of the ability to access emergency help, both for people with disabilities and for people in situations where placing a voice call to 911 could be difficult or dangerous; and (2) PSAPs by providing them with better information that can be synthesized with existing databases to enable emergency responders to assess and respond to emergencies more quickly and effectively.

9. In December 2012, AT&T, Sprint Nextel, T-Mobile, and Verizon entered into a voluntary agreement with the National Emergency Number Association (NENA) and APCO International (APCO) in which each of the four carriers agreed to provide text-to-911 service by May 15, 2014, to PSAPs that are capable of, and request to receive, text-to-911 service (*Carrier-NENA–APCO Agreement*). The signatory carriers made certain commitments related to their text messaging services, including implementation of the service to a PSAP ''within a reasonable amount of time'' not to exceed six months after such PSAP makes a ''valid'' request of the carrier. The agreement also stated that, ''consistent with the draft ATIS Standard for Interim Text-to-9–1–1, the PSAPs will select the format for how messages are to be delivered'' with incremental costs for delivery being the responsibility of the PSAP. Under the terms of the agreement, carriers were to meet these commitments ''independent of their ability to recover these associated costs from state or local governments.'' The carriers committed to working with NENA, APCO, and the Commission to develop outreach for consumers and support efforts to educate PSAPs. The carriers' commitments also did not extend to customers roaming on a network.

10. The *Carrier-NENA–APCO Agreement* followed on a number of successful trials of text-to-911, and voluntary reports submitted to the Commission since the agreement detail the ongoing activities of the four carrier-signatories in this regard. As of December 31, 2013, Verizon Wireless reports ''some 46 different jurisdictions are using one of the text-to-911 options that Verizon currently supports (up from 37 in October 2013), and several additional deployments are currently scheduled through 2014.'' AT&T has reported that it is in the process of launching a standards-based trial service for text-to-911 in the state of Tennessee for the end of the first quarter of 2014, and also reports a statewide six-month trial with the state of Vermont, which launched on August 23, 2013.

11. Shortly after the signing of the *Carrier-NENA–APCO Agreement,* the Commission adopted the *2012 Further Notice,* which proposed, *inter alia,* to require all CMRS providers, as well as other providers of interconnected text messaging services, to support the ability of consumers to send text messages to 911 in all areas throughout the nation where PSAPs are also prepared to receive the texts. The *2012 Further Notice's* baseline requirements were modeled on the *Carrier-NENA–APCO Agreement,* and the Commission sought comment on whether all carriers, including regional, small and rural carriers, and all ''interconnected text'' providers can achieve these milestones in the same or similar timeframes. In this respect, the *2012 Further Notice* recognized prevalence of SMS-based messaging, but also noted the trend towards IP-based messaging platforms. The *2012 Further Notice* proposed that the Commission apply any text-to-911 rules it may adopt to both SMS and IP-based text messaging services. The Commission noted that, to the extent that consumers are gravitating to such IP-based applications as their primary means of communicating by text, they may reasonably come to expect that these applications support text-to-911. The Commission also recognized the public interest benefits associated with enabling IP-based messaging users to send texts to 911 from those applications—applications with which the user is familiar—as consumer familiarity is vital in emergency situations where seconds matter. To that end, the *2012 Further Notice* sought to ensure that consumers ultimately have access to the same text-to-911 capabilities on the full array of texting applications that they use for everyday communication—regardless of provider or platform.

12. In May 2013, the Commission issued a Report and Order (*Bounce-Back Order*) requiring CMRS providers and interconnected text providers to supply consumers attempting to send a text to 911 an automatic ''bounce back'' message when the service is unavailable. In requiring this bounce back messaging, the Commission found a ''clear benefit and present need'' for persons who attempt to send emergency text messages to know immediately if their text cannot be delivered to the proper authorities, citing evidence that many consumers already believe they can send text messages to 911. The Commission further determined that in emergency situations, where call volumes can spike and networks become congested, consumers are often unable to place voice calls, and that in these instances it is particularly important that consumers seeking emergency assistance by text receive a notification when text-to-911 functionality is not available. Evidence in the record further compelled the Commission to extend the bounce back obligation to providers of interconnected text messaging service, citing the proliferation of smartphones and significant volume of messages using non-SMS or non-MMS applications that ride on cellular data networks. The Commission noted specifically that, ''[a]s these applications proliferate, consumers are likely to assume that they should be as capable

of reaching 911 as any other telephone number.''

III. Discussion

A. Timeframe for Implementation of Text-to-911 Capability

13. We seek comment on a proposal that text-to-911 capability should be made available by all text providers no later than December 31, 2014, and should be provided within a reasonable time after a PSAP has made a valid request for service, not to exceed six months. We seek specific comments on this tentative conclusion, particularly with respect to small or rural CMRS carriers and interconnected text providers, none of whom are parties to the *Carrier-NENA–APCO Agreement.* Would PSAPs and consumers benefit from our establishment of a uniform deadline of December 31, 2014, for both CMRS and interconnected text providers?

14. With respect to CMRS providers other than the four signatories to the *Carrier-NENA–APCO Agreement,* we believe that implementation by December 31, 2014, is achievable. First, the progress made by the four major providers illustrates the technical feasibility of text-to-911 implementation for other CMRS providers, including small and rural providers. The adoption of the ATIS standard for text-to-911 over the SMS platform also satisfies a condition that some small carriers cited as a pre-condition to their ability to implement text-to-911. Indeed, small and rural providers may be able to achieve cost savings in their implementation by leveraging some of the text-to-911 databases and other infrastructure that text-to-911 vendors will have in place by May 15, 2014 to support provision of text-to-911 by the four major providers. Thus, providing small and rural providers with a small amount of additional time beyond the May 2014 timeframe should provide an opportunity for them to undertake the necessary preparatory action and spread their costs over a longer period, while still providing timely and tangible consumer benefits. The Competitive Carriers Association (CCA) also suggests that smaller carriers can meet a December 31, 2014 deadline for responding to a valid PSAP request for text-to-911 service. We seek comment on these views.

B. Timeframe for Interconnected OTT Text Providers

15. With respect to interconnected text providers, however, we also must take into account the unique technical complexities they may face in implementing text-to-911. We therefore seek comment on whether such factors weigh in favor of interconnected text providers being subject to an alternative timeframe. In general, interconnected over-the-top text providers can function both when a connection to an underlying CMRS network is present and when it is not. However, those technical issues that arise from the routing of texts from Wi-Fi locations need not be resolved at this time because we do not propose that they be implemented as part of this initial phase of text-to-911 implementation. Commenters indicate that interconnected text providers will likely have to resolve other issues, such as OTT client identifiers that would enable ''callback'' from PSAPs, IP addressing, security challenges, and operating system (OS) service layer access to enable routing 911 texts through different functional components in the existing SMS architecture.

16. Comments to date from public safety entities argue that, even considering the technical challenges, ''interconnected text providers should be capable of meeting newly-imposed text-to-9–1–1 obligations on relatively short timeframes.'' Nevertheless, NENA recommends a two-tiered approach to compliance deadlines for ''two classes of [originating service providers (OSPs)], interconnected and integrated text providers, aimed at accommodating differences in interconnected text OSPs' platforms.'' NENA further recommends that the Commission ''strictly limit the additional time granted to interconnected text OSPs to emphasize the public interest and necessity embodied by these new obligations, and to minimize the extent of consumer confusion that could arise during the period between the two deadlines.'' Also, APCO encourages the Commission to establish firm dates ''to ensure meaningful progress and ultimate compliance'' for these entities.

17. Other commenters take a contrary view and assert that too many technical considerations remain to be resolved before the consideration of any deadline. Comcast contends that it is ''premature for the Commission to establish a deadline for interconnected text message providers to equip their services with a text-to-911 mechanism.'' The VON Coalition contends that generating accurate location information requires the input of multiple participants in the network ecosystem, particularly for third-party texting applications that do not have access or control of the underlying network. The VON Coalition also contends that GPS alone and commercial location based services are not sufficient in the 911 context, noting that manual mapping of Wi-Fi routers, for example, may not be routinely updated or audited. VON does not view these challenges as ''necessarily insurmountable'' and notes that its ''members already are participating in industry working groups . . . to find avenues to attempt to overcome them.'' VON submits that such approaches ''will require significant cooperation across a broad set of entities (*e.g.,* providers of Wi-Fi access, wireless services, OTT application developers, emergency services vendors and providers) and standardized global approaches.'' ITI asserts that ''[m]andating any technology requirements in application design would be difficult and costly for companies that design one application to run across multiple devices and platforms.''

18. A critical factor affecting the feasibility of the timeframe for interconnected text providers to implement text-to-911 at the same level of functionality as CMRS providers is how quickly interconnected text providers can implement a technical solution that will support ''coarse'' location of application users so that their texts can be routed to the correct PSAP. As discussed below, there are several technical models exist that could support providing coarse location of interconnected text users in the near-term when an underlying connection to a CMRS network is present.

C. OTT Text-to-911 Message Delivery Models

19. While these models are not the only architectural approaches that interconnected text providers might take, we describe the key aspects of three approaches to solicit comment on them and other potential technological solutions that support imposing a near-term time frame for interconnected text providers. We seek comment on the technical feasibility for interconnected text providers to implement these models by the proposed deadline and request comment on how other factors, such as necessary software changes, handset development cycles, and security issues may affect the timeframes that we would adopt.

1. Access CMRS Messaging Platform via API

20. We recognize that interconnected text providers face an array of choices in considering methods to relay a text to a PSAP. As an initial matter, although OTT providers' applications are primarily designed to use IP-based protocols to deliver text messages to

destinations identified by a telephone number, they can, however, utilize SMS-based protocols and route the text over the underlying carrier's SMS network. (While we use the term ''OTT'' in discussing the technical protocols that an application may use to route a text message to a PSAP, in terms of feasibility for implementation by December 31, 2014, our proposal remains focused on the subset of OTT providers that meet the definition of interconnected text providers.) An OTT texting application can be programmed to recognize that the user is sending a text message to the text short code ''911'' and automatically invoke the wireless device's native SMS application programming interface (API) for sending SMS messages. This functionality is distinct from the application's normal operating mode which is generally designed to route a text via a means other than the native SMS capability of the device. Upon invoking the native SMS texting application, the text-to-911 message will be handled by the underlying wireless carrier, *i.e.,* the text will be routed through the carrier's (or its agent's) Text Control Center (TCC), which is the functional element of the Short Message Service Center (SMSC) dedicated to routing texts to the appropriate Public Safety Answering Point (PSAP).

21. In this model an SMSC cannot distinguish generally between a SMS message generated by an OTT application and the native SMS API. Consistent with the SMS-to-911 standard, the carrier's TCC would then forward the text along with coarse location information to the PSAP. Because of this, we consider it unlikely that consumers in the near term will expect text-to-911 to work in those circumstances where cellular network connectivity is not available. We believe this method is available to OTT providers today and that it can be implemented by December 31, 2014, through relatively minor enhancements to their APIs. We seek comment on this view.

22. We note that our view on the feasibility of interconnected text providers using this method to support text-to-911 is premised on the continued availability of CMRS providers' SMS networks to handle texts from OTT providers. We note that the model described here assumes that CMRS providers would provide access to their SMS networks for texts to 911 generated on OTT applications. Some CMRS providers already afford this access to some OTT applications, and the model posits that CMRS providers could receive requests from other OTT providers for similar access to the CMRS provider's native texting application APIs. CMRS providers would need to devote technical and product management resources to meeting such requests and to ongoing maintenance and performance issues. We also note that the average CMRS provider offers a wide range of wireless devices to consumers, each having somewhat distinct technical parameters and programming to support third party applications. Thus, a CMRS provider would have to coordinate with each handset manufacturer and associated operating system provider to ensure that each device model that is capable of supporting an interconnected text messaging application would also be capable of interfacing with the CMRS provider's underlying native texting application and SMS or messaging platform. We seek comment on these observations. What specific considerations should we take into account regarding how CMRS providers would implement a requirement to support OTT provider's use of their native messaging application? Beyond what we have described herein, what specific actions must a CMRS provider take to afford access to its underlying SMS or messaging platform? Are there any specific industry best practices or guidelines presently in place that may serve to provide a framework for the coordination between CRMS providers and OTT providers?

23. In suggesting that a SMS default for interconnected text providers can provide a viable near term solution for text-to-911, we emphasize that we are not proposing that such a relationship would occur absent reasonable compensation to the underlying network provider or similar arrangements. Nor do we propose to constrain CMRS providers from transitioning their SMS platforms to new technologies if they choose to do so at some point in the future. Rather than requiring CMRS providers to maintain their SMS platforms in perpetuity for the sole purpose of supporting text-to-911 for third-party interconnected text providers, we expect that interconnected text providers will need to develop alternative text-to-911 delivery methods as technology evolves. We seek comment on these views. We believe that, if interconnected text providers have access to the API on CMRS carrier devices, those issues may be resolvable for interconnected text applications riding over the SMS platform. We finally note that resolving such issues may be dependent on CMRS carriers not impeding interconnected text providers' capability to deliver text-to-911 messages. We therefore propose adopting a requirement that CMRS carriers not block the access to capabilities that would enable interconnected text providers to provide consumers using their OTT applications to send texts to 911. We seek comment on these views. We also invite comment on whether this proposal and the measures necessary for interconnected text providers to take would require timeframes other than the uniform one that we propose. If so, what would alternative timeframes would be reasonable?

2. Network and Server Based Models

24. We also present three additional models by which an OTT provider could deliver a text message using APIs that route the text via an Internet connection, either over a wireless carrier's data network or a non-CMRS Wi-Fi network, to the interconnected text provider's server.[4] In these scenarios, the OTT provider's text handling server recognizes that the text message is addressed to 911 and then interacts with a third-party TCC to route the text to a PSAP. In each model, it is assumed that the user has a phone number assigned to the user by the wireless carrier. Generally, and consistent with our definition of a covered text provider, when a user subscribes to an interconnected text messaging service, the OTT provider will provision the user with a ten digit phone number to enable the user to send and receive texts from other texting application users. In doing so, the OTT provider enables the user to avoid relying on the wireless carrier's SMS network to route text messages.

25. In our basic server-based model for routing a text message to 911, we assume that the OTT application uses the same phone number as the device itself. In this case, the OTT service provider receives the text at its server and passes the originating phone number and message to a third-party TCC. It could use a number of messaging protocols to effectuate the delivery to the TCC, such as Short Message Peer-to-Peer (SMPP), Session Initiation Protocol (SIP) MESSAGE, or Message Session Relay Protocol (MSRP). The TCC draws location from a commercial location service, just as for the CMRS SMS service, to acquire the location of the mobile device.

[4] For a graphical representation of the models discussed, *see Second Further Notice* at paragraphs 24 through 33, available at http://www.fcc.gov/document/text-911-policy-statement-and-second-fnprm.

26. A second model relies on using the number assigned by the OTT provider to route the text to 911. In this model, the texting application invokes a system call on the API, such as on wireless devices using the Android Operating System, the system call would be the line of code ''getLine1Number()'', which would retrieve the phone number string, for example, the MSISDN for a GSM phone, and obtains the phone number of the mobile device and conveys it via the protocol message sent to the OTT provider's server. The provider, as before, then sends the message through a third party TCC, which in turn invokes the commercial location service and routes the text to the appropriate PSAP.

27. The third server-based solution relies on the location API in the mobile device, rather than a commercial location service, to obtain the user's location. Many OTT text applications already obtain the user's location for non-emergency purposes. The OTT text application includes GPS-based location information with the text content and routes the text through its server to the TCC. The use of device location would likely offer higher accuracy in many cases and may meet the Commission's location accuracy requirements for handset-based location delivery. In addition, this solution does not rely on cellular data connectivity and continues to work as long as the OTT text application can connect to the Internet. These models are not exhaustive of those available to OTT providers to route texts to PSAPs; in fact, an application could implement both a mobile-based solution and a server-based solutions. This would ensure that text messages to 911 can reach the TCC whether SMS or Internet data service is available. We seek comment on whether the models described above are consistent with a commercial implementation to support text-to-911. What other models might an OTT provider consider using to route a text to 911? Which functions are OTT providers capable of handling within their servers and which functions are they most likely going to have to secure access to third party providers to support routing a text to a PSAP?

D. Costs

28. As discussed above, interconnected text providers face a number of technical issues in being able to send text messages from its users to PSAPs. Specifically, the VON Coalition notes:

> Resolving these third-party gateway technical challenges would not only take time, but once resolved, would impose significant costs on providers of software applications—many of which are small businesses offering innovative IP-based capabilities at little or no cost to consumers. The introduction of third-party gateways and vendors (and, thus ongoing payments to and coordination with those vendors) into the application provider's service—something that would be necessary only if providers were required to try to bootstrap the legacy TDM 911 system onto Next Generation IP services—introduces complexities and points of possible failure, as well as costs the developer did not anticipate. VON understands that many third-party vendors typically charge monthly per-subscriber fees (regardless of whether or how many subscribers ever use the application to try to reach 911), in addition to upfront set-up costs. Such per-subscriber costs, or even per-transaction costs, could quickly tip an otherwise successful business model on its head as the costs approach the revenues (if any) made by the application provider.''

On a related note, Sprint notes that ''[w]hile interconnected text providers will incur costs associated with compliance, CMRS carriers are also likely to incur additional costs because CMRS carriers will need to provide network and device capabilities to interconnected text providers.'' Sprint also argues that ''CMRS carriers should not be expected to incur such costs without reimbursement from interconnected text providers, since any such costs will be undertaken to facilitate compliance by a third-party.''

29. We recognize that a requirement on interconnected text providers would impose additional costs. We seek comment on the implementation costs associated with the models discussed above. For example, with respect to the mobile-based model, we estimate that a requirement would impose an implementation cost of approximately $4,500 per provider per platform, for an industry-wide cost of approximately $555,000. We came to this conclusion using the Constructive Cost Model II (COCOMO II), which can provide an estimate of the cost, effort, and schedule for planning new software development activity.[5] The model analyzes a number of variables concerning software size, specifically source lines of code, whether new, reused, modified, or some combination thereof; software scale drivers; software cost drivers related to product, personnel, operating system platform specifics, and project specifics; and software labor rates.[6] We seek comment on this analysis, and we encourage those who disagree with this analysis to present their own methodology, analysis, and conclusions. Similarly, we seek comment on the costs for CMRS providers to enable OTT application interfacing with native text messaging applications. What software changes, if any, must a CMRS provider make to its underlying text messaging application to support the OTT application? Finally, what reoccurring expenses would there be that are not accounted for by COCOMO II, such as compliance and operating costs, including payments to acquire network and device capabilities from CMRS providers or others, depending on solution?

30. Beyond the estimated costs identified herein related to the mobile-based model, are there other initial and ongoing costs that interconnected text providers would incur to support text-to-911 service, particularly the server-based models that we have identified? For text routing purposes, would

[5] *See* University of Southern California, Center for Systems and Software Engineering, COCOMO II, available at *http://csse.usc.edu/csse/research/COCOMOII/cocomo_main.html* (last viewed Jan. 8, 2014).

[6] The COCOMO II web-based tool requires one to enter the total new source lines of code and the cost per person-month in dollars and to set a number of software scale and cost drivers at subjective levels (e.g., very low, low, nominal, high, very high, extra high). *See* COCOMO II, Constructive Cost Model, available at *http://csse.usc.edu/tools/COCOMOII.php* (last viewed Jan. 8, 2014). This model estimates that a one-time cost of $4,541 will be incurred, assuming that (a) 100 new source lines of code must be added to an existing application in order to meet the a text-to-911 mandate (which we believe is a high estimate, based on our own research), (b) the software labor rate is $19,435 per person-month, and (c) all cost drivers in the model are set to ''nominal.'' Cost per Person-Month is estimated as follows: average software engineer/developer/programmer total mean annual salary of $93,280 (Bureau of Labor Statistics (BLS), May 2012); a cost per person-month of approximately 173 hours; mean hourly rate of $44.85 (BLS, May 2012) plus an estimated overhead factor of 2.5, or $112.13 per person hour. ($93,280 × 2.5)/12 = $19,435 cost per person-month. For mean annual wage of a software developer of applications, *see* Bureau of Labor Statistics, Occupational Employment Statistics, Occupational Employment and Wages, May 2012, available at *http://bls.gov/oes/current/oes151132.htm* (last viewed Jan. 8, 2014). In general, overhead costs are between 150–250 percent of the cost of a direct labor hour. *See* Cynthia R. Cook, John C. Graser, RAND, Military Airframe Acquisition Costs (2001) available at *http://www.rand.org/content/dam/rand/pubs/monograph_reports/MR1325/MR1325.ch9.pdf* (last viewed Jan. 8, 2014). Moreover, we estimate that at present, there are approximately thirty interconnected text messaging services, offering their services on anywhere from one to five different operating system platforms. To account for future proliferation of platform offerings, we estimate that all service providers would offer their service across four main operating system platforms and that each of them would incur a one-time cost of $4,541 to add 100 new source lines of code to an existing application, as discussed above. The resulting nationwide implementation cost for these affected applications would therefore be approximately $544,920 (*i.e.,* 30 × 4 × $4,541).

interconnected text providers be able to use the same vendors that CMRS providers use? If so, would their routing costs be similar to those involved for CMRS providers? Would a per-incident service model be feasible for smaller interconnected text providers, and if so, would it be preferable to other alternatives? What costs would be associated with a consumer outreach effort from interconnected text providers to educate consumers about text-to-911? What other potential costs to interconnected text providers should the Commission consider, if any? Since many interconnected text providers offer their services at no charge and they may incur significant costs to implement text-to-911, will interconnected text providers have to start charging for these services or are there other ways to obtain revenues to cover these costs? What effect will this have on future innovation and competition?

E. Relay Services

31. Individuals who are deaf, hard of hearing, or have speech disabilities may elect to use existing text-to-voice relay services (*e.g.,* IP relay) to contact 911 when they need to communicate with PSAPs. IP Relay is a form of telecommunications relay service that permits an individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the Internet, rather than using a TTY and the public switched telephone network. These existing relay services do not provide direct delivery of text to PSAPs. Moreover, many commenters have asserted, and we agree, that relay services have distinct limitations and are not an acceptable substitute for direct text access once text-to-911 capabilities become available in a jurisdiction. Nevertheless, relay providers are uniquely situated to ensure that deaf, hard of hearing, or speech-impaired individuals can reach emergency personnel because only relay providers have the capability to ensure that if a consumer attempts to text a PSAP that is not text-to-911 ready, the message will still be delivered (as a relay message). We seek comment on whether relay service providers—to the extent they offer applications that can send text messages to North American Numbering Plan numbers—should develop direct text-to-text services to support communication with PSAPs that are text-capable, while expediting text-to-voice relay calls where the PSAP is not capable of receiving text messages directly from a caller. Is it technically possible for current relay technologies to support pass-through of a text to a PSAP without relaying the call? Could relay service providers re-use some or all of text control center (TCC) infrastructure being built for text-to-911 services? Are there other ways in which relay providers could improve or augment their services to support text-to-911 and the broader transition to NG911? What avenues might relay providers use to recoup their costs for providing this service?

F. PSAP Implementation

32. In the *2012 Further Notice,* the Commission acknowledged the disparate capabilities of PSAPs in terms of accepting and processing text messages to 911, and the need for the Commission to take these differing capabilities into account. The Commission also proposed a set of near-term solutions that would allow non-NG 911 capable PSAPs to handle text messages without requiring significant up-front investments or upgrades, including the use of web browsers, gateway centers, conversion of text messages to TTY calls, and state or regional aggregation of text-to-911 processing.

33. Commenters confirmed that significant differences persist in PSAP readiness. Fairfax County, for example, asserts that it ''cannot currently accept 9–1–1 messages sent via text'' and that it ''cannot predict when a transition from current 9–1–1 to NG9–1–1 will occur because the initial planning for a transition to NG9–1–1 is just beginning in Virginia.'' Some commenters oppose action by the Commission to compel carriers to support text-to-911 absent a parallel mandate for PSAPs, or otherwise urge the Commission to condition the timing of any mandate on a PSAP's ability to accept text messages.

34. We expect that broad support of text-to-911 will aid PSAPs that are beginning the NG911 transition or considering implementation of text-to-911, and that PSAPs may be more willing to do so given the availability on the provider side of this important service, in that budgeting authorities for states and localities will have more certainty to help justify expenditure of public funds. However, we recognize that barriers to PSAP implementation of these functionalities remain. We are interested in learning more about what those barriers are and what additional measures we can take consistent with our authority that may encourage more rapid uptake by PSAPs or other emergency response authorities to ensure that the all participants in the 911 ecosystem are meeting consumer expectations. How can the Commission assist in promoting action by PSAPs and others to overcome funding or other implementation obstacles? Is there outreach or other activities that the Commission or other organizations can undertake to facilitate this?

G. Phase II-Equivalent Location for Covered Text Providers

35. *CMRS Providers.* We appreciate the advocacy of public safety entities for the delivery of Phase II level location information and recognize that with currently available technology CMRS carriers face technical difficulties in providing Phase II equivalency for text-to-911 messages. The *Carrier–NENA–APCO Agreement,* the ATIS standard J–STD–110, and a large part of the record suggest that only coarse (cell sector) location should be used for current text-to-911 purposes. However, in the long term cell sector information alone neither offers optimal public safety benefits nor resolves the discrepancy in the ability of first responders to locate persons with hearing and speech disabilities compared to the ability to locate persons making voice 911 calls. Recent submissions to the record and the capability of smart phones to access and transmit precise Phase II level location information offer promise that text-to-911 message can be sent with more accurate location information to PSAPs. For example, at least one CMRS carrier offers subscribers ''thin-client'' applications that they can download on their CMRS-capable devices. Potentially, the application can acquire the Phase II level information from the smartphone's user plane platform and send the more precise location through the text control center (TCC) to the appropriate PSAP. However, the PSAP may have to ''re-bid'' to obtain the Phase II longitude- latitude information. We seek comment on this and similar capabilities to provide Phase II equivalent location information.

36. Several commenters submit that the Commission ''should leave the development of precise location information capability for text-to-911 to further product and application development and related standards work using LTE and NG911 technologies.'' Nevertheless, we continue to emphasize that the long-term objective is for text messaging services, whether from CMRS carriers or interconnected text providers, to provide for Phase II equivalent location information with text-to-911 calls. We believe that a combination of Commission initiatives and industry efforts can achieve this goal. For example, concerning the capabilities of CMRS providers to deliver Phase II quality location with text-to-911, the

current CSRIC IV Working Group 1—NG–911 is studying and is due to report in March 2014 on the technical feasibility of including enhanced location information in text messages sent to PSAPs. In addition, as noted below, the NENA i3Message Session Relay Protocol (MSRP) could be re-used to retrieve GPS-derived latitude-longitude information. We seek comment on these and similar efforts of standards-bodies pursuing such solutions and look forward to further input from public safety entities and industry that will foster those efforts. At the same time, we invite comment on what might be reasonable timeframes to achieve more precise location capabilities in sending text messages to 911. We stress that one of the critical long term goals to enable PSAPs to dispatch first responders more directly to a consumer texting 911 is for voice and text service providers to meet the same 911 location accuracy requirements.

37. *Interconnected Text Providers.* In seeking comment to establish such a time frame for interconnected text applications to provide coarse location information, we also have a long-term concern for the need to ensure that interconnected text messages to 911 have more accurate location information routed to PSAPs. One of the described server-based solutions, using the location application programming interface (API) in the mobile device rather than a commercial location service, promises the capability to meet the Commission's Phase II location accuracy requirements for handset-based location delivery. While the selection of anyone solution by interconnected text providers should remain technologically neutral, we seek comment on what technological developments need to occur for interconnected text providers to implement a solution that provides Phase II equivalent location information. Further, we find that the record indicates other possible interconnected text-to-911 models that could deliver a more precise location. We request comment on the timeframe in which interconnected text providers could reasonably adopt and implement such approaches. What factors would we need to consider in establishing this timeframe? For example, should different timeframes be established, depending on whether the text provider is an interconnected or an integrated text provider?

38. Also, we seek comment on what technological developments are occurring that would allow interconnected text providers to either access a wireless carrier network for cellular data connectivity or connect to an IP-based network to provide Phase II equivalent location information. Although the CSRIC Working Group's focus is on the capability of using the wireless carrier network, we find that to address consumer concerns to have the ability to seamlessly reach 911, that there should be no distinction between the capabilities of CMRS carriers and interconnected service providers to provide Phase II equivalent location information. We seek comment on this view. Specifically, we request comment on whether there are any technical issues that arise for CMRS carriers and not for interconnected text providers or vice versa.

H. Roaming

39. In the *2012 Further Notice,* the Commission suggested that it is critical for consumers who are roaming to have access to text-to-911 in an emergency. However, the Commission acknowledged that the *Carrier–NENA–APCO Agreement* does not provide for text-to-911 support for roaming subscribers, and that because ''sending and receiving texts while roaming involves two networks, the consumer's home network and the visited roaming network, roaming may create issues for text-to-911 because of the greater technical complexity of routing the message to the correct PSAP based on the consumer's location.'' The Commission sought specific comment on the mechanics required for home and roaming network operators to identify and communicate the location of a texting consumer to PSAPs, as well as other asserted technical limitations.

40. Carriers including AT&T and Verizon state that a roaming obligation is not technically feasible, and encourage the Commission to allow industry stakeholders to address this issue and defer consideration of any rules at this time. CTIA similarly characterizes the ability of roaming subscribers to send a text to 911 as being ''considerabl[y] uncertain'' and encourages more study of the issue. CTIA also notes the views of the Emergency Access Advisory Committee (EAAC), which suggests that text-to-911 by a roaming subscriber would require ''require significant modifications to the wireless originator network and core infrastructure that will ultimately delay the deployment of SMS-to-9–1–1 services.'' Sprint and T-Mobile inform that their networks do not currently have the technological capability to support roaming subscriber because ''while location information (in the form of cell sector information) is available in the visited network (onto which the subscriber has roamed), it is not normally available to the home CMRS network.'' Both Sprint and T-Mobile encourage the Commission to ''allow for eventual adoption of standards that would contemplate roaming in the NG911 environment.'' Also, carriers urge the Commission to wait for standards to be adopted to address roaming in the NG–911 environment.

41. On the other hand, public safety entities advocate pushing forward in the face of the technical complexities. BRETSA suggests that if transmitting text messages from a roaming user to a PSAP is not currently achievable, it is better to implement text-to-9–1–1 without roaming capability than to delay text-to-9–1–1 implementation altogether. NENA concedes that the complexity of transmission exists, and it supports mirroring the roaming exclusion contained in the *Carrier–NENA–APCO Agreement.* However, NENA supports the reevaluation of this exclusion at regular intervals, beginning no later than one year after the Commission's initial text-to-9–1–1 rules come into force.

42. As a general policy matter, we continue to believe that access to 911 via text is just as critical for roaming consumers as it is for consumers utilizing a home carrier's network. Indeed, consumers may not even be aware when they are roaming, and carrier coverage maps may reflect coverage where they may only have roaming agreements. In an emergency, being able to distinguish which carrier is providing a signal should not be the responsibility of the consumer when seconds may matter. Roaming is also particularly critical for customers of small or rural carriers, who rely on roaming when traveling outside the regional footprint of these carriers. We seek comment on this view.

43. At the outset, however, we seek comment on the volume of text-to-911 calls that can reasonably be anticipated when roaming—and reflected in data that carriers might be collecting or consumer surveys by research or industry groups. Telecom RERC asserts that the record indicates a lack of sufficient data on how serious the problem might be. Telecom RERC ''suggests that it is necessary for carriers to submit statistics on the number of times users attempted to text 9–1–1 during a roaming situation to the FCC.'' We invite comment on approaches we could adopt to collect such roaming data.

44. We also seek comment on the costs of requiring roaming text-to-911 calls to be routed to the correct, nearest

PSAPs on the roaming carrier's network. For example, Sprint asserts that there would be a significant impact on mobile devices were we to adopt a roaming requirement. Sprint further submits that ''for the visited network to support roaming the visited network would need to be capable of determining when a text is attempting to reach a local emergency service via 9–1–1, and then this system would need to send the text message to the local text-to-911 gateway, ignoring all normal SMS routing rules. SMS servers would need to be modified to accomplish this. Any responses from the PSAP would also need to somehow be intercepted, so they are not sent back to the home network's Short Message Service Center ('SMSC'), which would require further routing modifications.''

45. We further recognize that additional technical issues may require resolution before we would set a date certain for CMRS providers to meet this proposed obligation. Some commenters suggest that CMRS networks cannot currently support roaming and the delivery of location information because while the cell sector information is available in the visited network, it is not available in the home network. For instance, commenters note that the current ATIS standard for text-to-911 over the SMS platform does not support a roaming capability. Further, Sprint adds that mobile ''devices . . . would need to be capable of interacting with multiple SMSCs (both the home and serving SMSCs)'' and that ''[s]torage and delivery of undeliverable SMS messages would also need to be addressed.''

46. Given the technological complexities for routing roaming text-to-911 calls, we seek comment on what measures we could take to either facilitate or mandate within a reasonable timeframe a roaming text-to-911 requirement prior to wide-spread implementation of NG911. For example, what standards, if any, would need to be adopted before a requirement would be appropriate? We also seek specific information on what the cost burden would be for carriers to make the necessary changes to their SMS platforms. What timeframe would be required for carriers to make such changes? Would the costs to make CMRS network modifications outweigh the public safety benefit of text-to-911 roaming; and if so, what would the magnitude of those costs be, *e.g.,* compared to the potential call volume for text-to-911? Further, do any of the mobile-based, server-based solutions, or other similar potential solutions described above in this *Second Further Notice* provide a technically feasible pathway for implementing a roaming text-to-911 requirement either over SMS platforms or, alternatively, IP-based platforms before implementation of NG911 makes text-to-911 roaming more feasible? If so, what standards, if any, would have to be adopted to implement those solutions? What would a reasonable timeframe be to adopt those standards and test such for implementation? Additionally, what further educational measures or coordination can the Commission take to make consumers aware of the limitations in trying to send a text-to-911 message while roaming?

I. Liability Protection

47. In the *2012 Further Notice,* the Commission recognized that adequate liability protection is needed for PSAPs, CMRS providers, interconnected service providers, and vendors to proceed with implementation of text-to-911. The Commission noted that the 2008 New and Emerging Technologies 911 Improvement Act (*NET 911 Act*) expanded the scope of state liability protection by requiring states to provide parity in the degree of protection provided to traditional and non-traditional 911 providers. In the Next Generation 9–1–1 Advancement Act of 2012 (*NG911 Advancement Act*), Congress further extended these parity provisions to providers of NG911 service. The *2012 Further Notice* sought comment on whether providers of text-to-911 service have sufficient liability protection under current law to provide text-to-911 services to their customers. The Commission observed that under the *Carrier–NENA–APCO Agreement,* the four major wireless carriers have committed to deploy text-to-911 capability without any precondition requiring additional liability protection other than the protection afforded by current law. Nevertheless, the *2012 Further Notice* sought comment on whether the Commission could take additional steps—consistent with our regulatory authority—to provide additional liability protection to text-to-911 service providers.

48. In February 2013, pursuant to the *NG911 Advancement Act,* Commission staff submitted a report to Congress addressing the legal and regulatory framework for NG911 services. With respect to liability, the *NG911 Report* recognized that tort liability standards are traditionally a matter of state law, and recommended that Congress consider incentives for states to revise their liability regimes to provide appropriate protections for entities providing or supporting NG911 services. The *NG911 Report* also suggested that Congress include appropriate liability protection as a part of any federal law that imposes NG911 requirements or solicits voluntary NG911 activity.

49. In response to the *2012 Further Notice,* numerous parties submitted comments on liability issues. We do not address these comments here, but encourage parties to provide any additional or updated information relevant to our consideration of this issue including the possible risks and costs of implementing text-to-911 without liability protections in place. In addition, we seek comment on whether adopting text-to-911 requirements as proposed in this proceeding would assist in mitigating liability concerns by establishing standards of conduct that could be invoked by text-to-911 providers in defense against state tort liability or similar claims.

J. Waivers

50. Should the Commission adopt mandatory obligations to support text-to-911, we seek comment on to what extent, and under what circumstances, the Commission should consider waivers. The Commission has a generally articulated waiver standard under §§ 1.3 and 1.925 of our rules. The Commission has also from time to time provided guidance on how applicants may demonstrate that the waiver standard has been met in a particular circumstance. Under certain statutes, Congress has also directed the Commission to consider waivers in particular circumstances. For example, section 716(h)(1) of the Communications and Video Accessibility Act (CVAA) allows the Commission to grant waivers of the CVAA's accessibility requirements for features or functions of devices capable of accessing advanced communications services but which are, in the judgment of the Commission, designed primarily for purposes other than accessing advanced communications. The Commission sought comment on how to implement this provision, and subsequently provided guidance on the substantive factors impacting the Commission's waiver analysis.

51. Recognizing that to some extent it may depend on the rule adopted, we seek comment on what factors or other considerations would be relevant to the Commission in evaluating whether a wavier would be appropriate. Given the significance of the public benefits of supporting text-to-911, is a showing of financial difficulty or technical infeasibility in complying sufficient on its own? What amount of financial challenge or information regarding technical difficulties should be demonstrated? If the waiver is related to

any mandatory timeframe, what circumstances should be considered? Should additional time be limited in availability? What other factual considerations should the Commission take into account?

K. Treatment of Voluntary Agreements

52. In this rulemaking, we seek comment on a framework for encouraging voluntary industry commitments that will benefit the public interest. The voluntary commitment that AT&T, Sprint, T-Mobile, and Verizon Wireless have entered into with NENA and APCO could serve as a model for further industry action on such issues. We seek comment on how any rules adopted in this proceeding could provide a ''safe harbor'' option for companies that have entered into voluntary agreements with public safety that the Commission has determined serves the public interest. Under a safe harbor approach, should companies be given the option to either be bound by their voluntary commitments or to be subject to the rules? If companies choosing to abide by their voluntary commitments would be afforded safe harbor treatment, then if such a company was alleged to have violated its voluntary commitment, should it be afforded an opportunity to correct its behavior without fear of enforcement action? Conversely, for companies that elect to be subject to the rules, would they be subject to standard enforcement mechanisms?

53. We also seek comment on what should happen if a company violates its voluntary commitment after being afforded an opportunity to correct. Should failure to abide by the voluntary commitment after opportunity to correct lead to termination of the safe harbor? Should the company be required to switch to the rules track or subject to enforcement action for sustained violations of its commitment? Should certain violations, *e.g.,* willful misconduct, void the safe harbor protections and deprive the company of the opportunity to correct? We seek comment how ensuring accountability under and the enforceability of voluntary commitments under any of these frameworks would impact the incentives for industry to enter into voluntary commitments that are in the public interest.

54. We seek comment on the potential risks as well as benefits of this approach to voluntary commitments. Are there circumstances in which the safe harbor option should not be made available? What should the Commission do if such voluntary agreements go beyond the Commission's rules in a particular area? In this context, do the interests of private parties negotiating voluntary agreements align with the Commission's or the public's interests? Should such an approach be time-limited or subject to re-evaluation based on changed circumstances, *e,g.,* where the Commission determines that additional regulatory action on a given issue may be warranted? Should we solicit public comment on such voluntary commitments before granting signatories a safe harbor?

55. We also seek comment on several ancillary issues. We seek comment on the nature of an ''election,'' and whether parties must join a voluntary agreement at its inception, or may join such an agreement at a later time. Would such a situation provide the opportunity for regulatory arbitrage? Another important aspect of voluntary commitments is the ability to measure and monitor industry compliance with such commitments. The *Carrier–NENA–APCO Agreement* included voluntary quarterly reporting, whereby parties to the commitment provide updated information to the Commission regarding the extent of their compliance with the commitment. We seek comment on whether for future voluntary commitments to qualify for the treatment described above, they must include a robust reporting requirement that provides the Commission with sufficient data to make informed decisions about the effectiveness of the voluntary commitment and, additionally, what the implications of such a voluntary information collection might be for purposes of the Paperwork Reduction Act and any other relevant legal requirements.

L. Future Evolution of Texting Services

56. In the *2012 Further Notice,* the Commission divided text applications into two broad categories: (1) interconnected text applications that use IP-based protocols to deliver text messages to a service provider, which the service provider then delivers the text messages to destinations identified by a telephone number, and (2) non-interconnected applications that only support communication with a defined set of users of compatible applications but do not support general communication with text-capable telephone numbers. We note that our definition of interconnected text, as codified in the *Bounce-Back Order,* encompasses applications ''that enable a consumer to send text messages to all or substantially all text-capable U.S. telephone numbers and receive text messages from the same.'' We seek comment whether the definition of interconnected text should also be interpreted to include a service that utilizes IP-based protocols for outgoing text and SMS-based protocols for the return text and request that commenters discuss any potential problems with such an interpretation.

57. As discussed above, our initial proposals remain focused on the subset of ''over-the-top'' applications that constitute interconnected text applications. The division of text applications into interconnected and non-interconnected remains appropriate given the record in this proceeding. We recognize, however, there are many varieties of text messaging applications, and many more varieties are likely to develop.

58. As these applications continue to grow in popularity, however, we expect that consumer habits will change, and with them, their expectations as to the functionality of these applications may also change. We seek comment on the varieties of messaging applications. Under what conditions would consumers expect that text messaging via an application that is not connected to the PSTN and does not allow direct texting to a phone number would enable a connection to 911? Do consumers expect that text messaging services generally have the ability to connect to text-capable telephone numbers? Do consumer expectations vary based on the nature of a particular application? Could such text messaging applications also create consumer expectations that they can reach emergency services? If so, should we require them to do so? What costs would be associated with doing so? For instance, would imposing text-to-911 requirements on non-interconnected text applications raise the cost of such services that would diminish innovation and investment? Should we extend the bounce-back requirement to such applications? Does the Commission have adequate bases of authority to impose such a mandate on such text providers?

M. Legal Authority

59. The Commission's *2012 Further Notice* sought comment on the FCC's authority to apply both a bounce-back requirement and more comprehensive text-to-911 rules to CMRS providers and other entities that offer interconnected text messaging services, including third-party providers of OTT text messaging applications. The *2012 Further Notice* discussed the scope of the Commission's authority under Title III, the CVAA, and the agency's ancillary authority.

60. Subsequently, in the 2013 *Bounce-Back Order,* the Commission

determined that numerous provisions of Title III provide the FCC with direct authority to impose 911 bounce-back requirements on CMRS providers, that the CVAA vests the Commission with direct authority to impose 911 bounce-back requirements on both CMRS providers and other providers of interconnected text messaging applications, including OTT providers, and that the agency has ancillary authority to apply 911 bounce-back requirements to providers of interconnected text messaging services, including OTT providers. The Commission explained, *inter alia,* that imposing 911 bounce back rules on OTT providers was reasonably ancillary to the Commission's Title III mandate regarding the use of spectrum and the Commission's statutory authority to adopt 911 regulations that ensure that consumers can reach emergency services. We invite parties to comment on whether there are any reasons why the Commission's previous determinations regarding the scope of our authority do not apply in the context of the foregoing proposals, including whether the CVAA provides authority to implement regulations mandating text-to-911 on a telecommunications network that is not on an IP-enabled emergency network. Further, we seek comment on whether text-to-911 is ''achievable and technically feasible'' for interconnected text providers. To the extent the Commission adopts rules that cover relay providers or other recipients of Interstate TRS funding, we believe we have authority to adopt such rules under sections 201(b) and 225 of the Communications Act. We seek comment on the extent of this authority.

IV. Initial Regulatory Flexibility Analysis

61. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact of the proposal described in the attached *Second Further Notice of Proposed Rulemaking* on small entities. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *Second Further Notice of Proposed Rulemaking*. The Commission will send a copy of the *Second Further Notice of Proposed Rulemaking,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second Further Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

62. Wireless consumers are increasingly using text messaging as a means of everyday communication on a variety of platforms. The legacy 911 system, however, does not support text messaging as a means of reaching emergency responders, leading to potential consumer confusion and even to possible danger. As consumer use of carrier-based and third party-provided texting applications expands and evolves, the 911 system must also evolve to enable wireless consumers to reach 911 in those emergency situations where a voice call is not feasible or appropriate.

63. In this *Second Further Notice of Proposed Rulemaking,* we propose rules that set timeframes that will enable Americans to send text messages to 911 (text-to-911) across platforms, and seek comment on consumers' use of text-to-911 while roaming. We also seek comment on the transmission to a PSAP of more specific information as to the location of a texting party. Specifically, we propose to require all wireless carriers and providers of ''interconnected'' text messaging applications to support the ability of consumers to send text messages to 911 in all areas throughout the nation where 911 Public Safety Answering Points (PSAPs) are also prepared to receive the texts no later than December 31, 2014. We also seek comment on requiring carriers to support text-to-911 when consumers are roaming on their networks, and to provide ''Phase II'' equivalent location information regarding the location from which a text is sent to 911. We also seek comment on enhancing liability protection for text providers within the Next Generation 911 (NG911) ecosystem, how relay services may support text-to-911, and how we should consider any waiver standards that may apply.

64. Our proposals build on the voluntary commitment by the four largest wireless carriers—in an agreement with the National Emergency Number Association (NENA), and the Association of Public Safety Communications Officials (APCO) (*Carrier-NENA–APCO Agreement*)—to make text-to-911 available to their customers by May 15, 2014. The baseline requirements we propose in this *Second Further Notice* for interconnected text providers are modeled on the *Carrier-NENA–APCO Agreement,* and we seek additional comment how all ''interconnected text'' providers can achieve these milestones in the same or similar timeframes.

65. Seeking comment on establishing timeframes for the addition of text capability to the 911 system for interconnected text providers and for all consumers when roaming on a CMRS network will vastly enhance the system's accessibility for over 40 million Americans with hearing or speech disabilities. It will also provide a vital and lifesaving alternative to the public in situations where 911 voice service is unavailable or placing a voice call could endanger the caller. Indeed, as recent history has shown, text messaging is often the most reliable means of communications during disasters where voice calls cannot be completed due to capacity constraints. Finally, implementing text-to-911 represents a crucial next step in the ongoing transition of the legacy 911 system to a NG911 system that will support not only text but will also enable consumers to send photos, videos, and data to PSAPs, enhancing the information available to first responders for assessing and responding to emergencies.

66. Our proposed approach to text-to-911 is also based on the presumption that consumers in emergency situations should be able to communicate using the text applications they are most familiar with from everyday use. Currently, the most commonly used texting technology is Short Message Service (SMS), which is available, familiar, and widely used by virtually all wireless consumers. In the *Carrier-NENA–APCO Agreement,* the four major carriers have indicated that they intend to use SMS-based text for their initial text-to-911 deployments, and we expect other initial deployments to be similarly SMS-based.

67. At the same time, have not limited our focus to SMS-based text. As a result of the rapid proliferation of smartphones and other advanced mobile devices, some consumers are beginning to move away from SMS to other IP-based text applications, including downloadable software applications provided by parties other than the underlying carrier. To the extent that consumers gravitate to such applications as their primary means of communicating by text, they may reasonably come to expect these applications to also support text-to-911, as consumer familiarity is vital in emergency situations where seconds matter. Therefore, in this *Second Further Notice,* we seek to ensure that consumers have access to the same text-to-911 capabilities on the full array of

texting applications that they use for ubiquitous on a reasonable timeframe.

B. Legal Basis

68. The legal basis for any action that may be taken pursuant to this *Second Further Notice of Proposed Rulemaking* is contained in sections 1, 2, 4(i), 7, 10, 201, 201(b), 214, 222, 225, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 615a, 615a-1, 615b, 615c(a), 615c(c), 615c(g), and 615(c)(1) of the Communications Act of 1934, 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 201(b), 214, 222, 225, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 615a, 615a–1, 615b, 615c, 615c(c), 615c(g), and 615(c)(1).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

69. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

70. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

1. Telecommunications Service Entities

(a) Wireless Telecommunications Service Providers

71. Pursuant to 47 CFR 20.18(a), the Commission's 911 service requirements are only applicable to Commercial Mobile Radio Service (CMRS) ''[providers], excluding mobile satellite service operators, to the extent that they: (1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and (2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.''

72. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

73. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by rules proposed in the *Second Further Notice.*

74. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

75. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the *Second Further Notice.* Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small.

76. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and*

Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules proposed in the *Second Further Notice.*

77. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

78. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

79. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

80. *Specialized Mobile Radio.* The Commission adopted small business size standards for the purpose of determining eligibility for bidding credits in auctions of Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The Commission defined a ''very small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards for both the 800 MHz and 900 MHz SMR Service. The first 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 licenses in the 900 MHz SMR band. In 2004, the Commission held a second auction of 900 MHz SMR licenses and three winning bidders identifying themselves as very small businesses won 7 licenses. The auction of 800 MHz SMR licenses for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small or very small businesses under the $15 million size standard won 38 licenses for the upper 200 channels. A second auction of 800 MHz SMR licenses was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

81. The auction of the 1,053 800 MHz SMR licenses for the General Category channels was conducted in 2000. Eleven bidders who won 108 licenses for the General Category channels in the 800 MHz SMR band qualified as small or very small businesses. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small or very small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed to be small businesses.

82. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues not exceeding $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

83. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. In 2006, the Commission conducted its first auction of AWS–1 licenses. In that initial AWS–1 auction, 31 winning bidders identified themselves as very small businesses. Twenty-six of the winning bidders identified themselves as small businesses. In a subsequent 2008 auction, the Commission offered 35 AWS–1 licenses. Four winning bidders identified themselves as very small businesses, and three of the winning bidders identified themselves as a small business. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but has proposed to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

84. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses in the 2305–2320 MHz and 2345–2360 MHz bands. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

85. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order,* the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. In 2000, the Commission conducted an auction of 52 Major Economic Area (''MEA'') licenses. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

86. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

87. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) was conducted in 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses. Seventeen winning bidders claimed small or very small business status, and nine winning bidders claimed entrepreneur status. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band. All three winning bidders claimed small business status.

88. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of A, B and E block 700 MHz licenses was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

89. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except

Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to *Trends in Telephone Service* data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

90. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

91. The category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2007 show that 607 Satellite Telecommunications firms that operated for that entire year. Of this total, 533 firms had annual receipts of under $10 million, and 74 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by rules proposed in the *Second Further Notice.*

92. The second category, *i.e.,* ''All Other Telecommunications'', comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,623 firms that operated for the entire year. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by rules proposed in the *Second Further Notice.*

(b) Equipment Manufacturers

93. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

94. *Semiconductor and Related Device Manufacturing.* These establishments manufacture ''computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media. The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.'' According to data from the 2007 U.S. Census, in 2007, there were 954 establishments engaged in this business. Of these, 545 had from 1 to 19 employees; 219 had from 20 to 99 employees; and 190 had 100 or more employees. Based on this data, the Commission concludes that the majority of the businesses engaged in this industry are small.

(c) Information Service and Software Providers

95. *Software Publishers.* Since 2007 these services have been defined within the broad economic census category of Custom Computer Programming Services; that category is defined as establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer. The SBA has developed a small business size standard for this category, which is annual gross receipts of $25 million or less. According to data from the 2007 U.S. Census, there were 41,571 establishments engaged in this business in 2007. Of these, 40,149 had annual gross receipts of less than $10,000,000. Another 1,422 establishments had gross receipts of $10,000,000 or more. Based on this data, the Commission concludes that the majority of the businesses engaged in this industry are small.

96. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined 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.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules proposed by the *Second Further Notice.*

97. *Internet Publishing and Broadcasting and Web Search Portals.* The Commission's action may pertain to interconnected Voice over Internet Protocol (VoIP) services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive

databases of Internet addresses and content in an easily searchable format (and known as Web search).

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

98. The *Second Further Notice* proposes that carriers and interconnected text providers that enter into voluntary agreements to provide text-to-911 should be required to submit reports to the Commission on their adherence to their commitments in order to qualify for a safe harbor with respect to any adopted rules. The Commission proposes that any reporting should be robust enough to provide the Commission with data sufficient for it to make informed decisions about the effectiveness of the voluntary commitment. Small entities opting for this path would do so voluntarily, and assume any costs associated with such option. Alternatively, they may opt to comply with mandatory rules which may be adopted, and which do not include a proposal for reporting.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

99. The RFA requires an agency to describe any significant, specifically small business 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) and exemption from coverage of the rule, or any part thereof, for small entities.''

100. The *Second Further Notice* analyzes a variety of possible means of implementing text-to-911 for interconnected text providers in a timely fashion and costs thereof, and seeks comment on these issues. We are also seeking comment on what waiver standards may apply and circumstances that may warrant a waiver of any rules we may adopt, including how financial constraints should be considered. Our proposals build on the recently filed voluntary commitment by the four largest wireless carriers—in an agreement with the National Emergency Number Association (NENA), and the Association of Public Safety Communications Officials (APCO) (*Carrier-NENA-APCO Agreement*) to make text-to-911 available to their customers by May 15, 2014, and the previously submitted record suggesting that all CMRS providers can support text-to-911 by December 31, 2014.

101. Additionally, the *Second Further Notice* seeks comment implementing text-to-911 for roaming consumers, enhancing location accuracy for consumers sending texts to 911, and the evolution of texting applications and how consumers use them.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

102. None.

Paperwork Reduction Act of 1995

This document contains no new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

Ex Parte Presentations

The proceedings initiated by this Second Further Notice of Proposed Rulemaking shall be treated as a ''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.

List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, Radio.

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 20 as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 1. The authority for Part 20 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, 332, 333, 615(a), 615(a) through 1, and 615(b).

■ 2. Section 20.18 paragraph (n) is amended by adding paragraphs (9) through (12) to read as follows

§ 20.18 911 Service.

* * * * *

(n) * * *

(9) *911 Text Message.* A 911 text message is a message, consisting entirely of text characters, intended to be delivered to a PSAP by a Covered Text Provider.

(10) *911 Short Code.* The 911 Short Code is the designated short code to identify a 911 Text Message to be sent to a designated PSAP.

(11) No later than December 31, 2014, all covered text providers must have the capability to route a 911 text message to a PSAP. In complying with this requirement, covered text providers must route text messages to the same PSAP to which a 911 voice call would be routed, unless the responsible local or state entity designates a different PSAP to receive 911 text messages and informs the carrier of that change.

(i) Covered text providers must begin routing all 911 texts messages to a PSAP making a valid request of the carrier within a reasonable amount of time, not to exceed six months.

(ii) PSAPs may begin making valid requests prior to the December 31, 2014, deadline for the capability to route 911 texts to PSAPs but covered text

providers are not obligated to begin providing such service until December 31, 2014.

(iii) *Valid Request* means that:

(A) The requesting PSAP represents that it is technically ready to receive 911 text messages in the format requested; and

(B) The appropriate local or State 911 service governing authority has specifically authorized the PSAP to accept and, by extension, the signatory service provider to provide, text-to-911 service (and such authorization is not subject to dispute).

(12) *Covered Devices and Network Connection.* Third party interconnected text providers that meet the definition of a ''covered text provider'' must offer the capability described in paragraph (n)(11) of this section during time periods when the mobile device is connected to a CMRS network.

[FR Doc. 2014–04731 Filed 3–4–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–HQ–MB–2013–0135; FF09M21200–145–FXMB1232099BPP0]

RIN 1018–BA26

Migratory Bird Permits; Extension of Expiration Dates for Double-Crested Cormorant Depredation Orders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose revisions to the two existing depredation orders for double-crested cormorants (*Phalacrocorax auritus*) at 50 CFR 21.47 and 21.48. We propose to extend the expiration dates from these depredation orders for 5 years. We do so to allow State and tribal resource management agencies to continue to manage double-crested cormorant problems under the terms and conditions of the depredation orders and gather data on the effects of double-crested cormorant control actions. If we do not extend these depredation orders, any action to control depredating double-crested cormorants after June 30, 2014, will require a permit. We have prepared a draft environmental assessment (DEA) to analyze the environmental impacts associated with this extension. Additionally, we propose to change the annual reporting date for the depredation order to protect public resources (50 CFR 21.48), to remove requirements for cormorant control activities around bald eagles and bald eagle nests for both depredation orders, and to recommend use of the National Bald Eagle Management Guidelines for both depredation orders. We invite the public to comment on the DEA and our proposed revisions to the regulations.

DATES: Electronic comments on this proposal via *http://www.regulations.gov* must be submitted by 11:59 p.m. Eastern time on April 4, 2014. Comments submitted by mail must be postmarked no later than April 4, 2014.

ADDRESSES: *Document availability:* The DEA is available at *http://www.regulations.gov* under Docket No. FWS–HQ–MB–2013–0135, and on our Service Web site at *http://www.fws.gov/migratorybirds/.*

Written comments: You may submit comments by either of the following two methods:

- *Federal eRulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket FWS–HQ–MB–2013–0135.
- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–HQ–MB–2013–0135; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide. See the Public Comments section below for more information.

FOR FURTHER INFORMATION CONTACT: George Allen at 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Part 21 of title 50 of the Code of Federal Regulations (CFR) covers migratory bird permits. Subpart D of 50 CFR part 21 deals specifically with the control of depredating birds and currently includes eight depredation orders. A depredation order is a regulation that allows the take of specific species of migratory birds, at specific locations and for specific purposes, without a depredation permit.

The depredation orders at 50 CFR 21.47 and 21.48 for double-crested cormorants allow take of the species under the provisions of our 2003 environmental impact statement (EIS; 68 FR 47603, August 11, 2003), in which we assessed the impacts of the depredation orders and determined that they would not significantly affect the status of the species. 50 CFR 21.47 concerns take of double-crested cormorants at aquaculture facilities, and 50 CFR 21.48 concerns take of double-crested cormorants to protect public resources. The EIS is available at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/Cormorant/CormorantFEIS.pdf.*

We extended the expiration dates of these depredation orders to June 30, 2014, on April 6, 2009 (74 FR 15394). We reported at that time that the data we had gathered since the issuance of the final rule in 2003 and data from the 2003 EIS suggest that the orders had not had any significant negative effect on double-crested cormorant populations; data suggest that cormorant populations were stable or increasing with the orders in effect.

We have continued to comply with our goals stated in the 2003 EIS by making every effort to capture data from improved double-crested cormorant populations. We stated in 2009 that we recognize that it probably will be necessary to update the EIS at some time in the future. On November 8, 2011, we requested public comments to help guide the preparation of a supplemental environmental impact statement or environmental assessment and to help us determine future national policy for effective management of double-crested cormorant populations within the United States (76 FR 69225). On January 27, 2012, we extended the comment period on the November 8, 2011 (77 FR 4274). However, because of constraints on our ability to conduct the work necessary to complete a supplemental environmental impact statement, we are forced to defer that effort. We base this proposed rule on information in our DEA, which is available from the sources listed in **ADDRESSES**.

Expiration Dates

We propose to extend the expiration dates for 5 years from the depredation orders at 50 CFR 21.47 and 21.48. These depredation orders are currently scheduled to expire on June 30, 2014. Extending the orders for 5 years would not pose a significant, detrimental effect on the long-term viability of double-

crested cormorant populations. Extending them would allow State and tribal resource management agencies to continue to manage double-crested cormorant problems under the terms and conditions of the depredation orders and gather data on the effects of double-crested cormorant control actions.

Entities acting under the Depredation Order would still be required follow applicable regulations. Depredation control efforts under the Depredation Order may take place only where cormorants are found committing or about to commit depredations under specified conditions, 50 CFR 21.47(c)(1) and 21.48(c)(1). There is the requirement to use initially non-lethal control methods, 50 CFR 21.47(d)(1) and 21.48(d)(1); provide notice to FWS indicating their intent to act under the Depredation Order, 50 CFR 21.48(d)(9); and notify the FWS in writing 30 days in advance if any single control action would individually, or a succession of such actions would cumulatively, kill more than 10 percent of the double-crested cormorants in a breeding colony, 50 CFR 21.48(d)(9)(i). FWS has the power to prohibit cormorant take under the depredation order if FWS deems it a threat to the long-term sustainability of double-crested cormorants or any other migratory bird species, 50 CFR 21.48(d)(9)(ii). Similarly, FWS reserves the right to suspend or revoke the authority of any person acting pursuant to the Depredation Order if they do not adhere to the Order's purpose, terms and conditions or if the long-term sustainability of double-crested cormorant populations is threatened, 50 CFR 21.47(d)(10) and 21.48(d)(13).

Updated population information indicates that the orders have not had a significant negative effect on double-crested cormorant populations (see data in the DEA). To summarize the DEA here, a 2006 study by Wetlands International estimated the continental population at between 1 to 2 million birds of four recognized subspecies. In the southeastern U.S., though numbers of cormorants declined 46% in both Mississippi and Alabama from the peak count in 2004, cormorants in that area have undergone dramatic increases in the last 20 years; and, in a 2006 study, Mississippi populations at some colonies are likely greater than the pre-1990 levels. For the Great Lakes survey on the US side, from 1997 to 2011, the population was between 45,626 and 53,802. Under various models, we estimate that the Great Lakes double-crested cormorant population would be lower than current numbers but would remain significantly higher than populations in the early 1990s.

If this proposed rule is adopted, the depredation orders will expire on June 30, 2019. If we determine that future changes to the depredation orders are necessary to eliminate an expiration date or make other changes, we would publish the requisite documents in the **Federal Register** to make those changes.

Other Proposed Changes to the Depredation Orders

We also propose other changes to the depredation orders at 50 CFR 21.47 and 21.48 to bring them in line with our current regulations and practices. Specifically, we propose to add a January 31 reporting deadline to the depredation order at aquaculture facilities (50 CFR 21.47) and to change the annual reporting date for the depredation order to protect public resources (50 CFR 21.48). There currently is no specified annual reporting date at 50 CFR 21.47. The current annual reporting date at 50 CFR 21.48 is December 31, but we propose to move that due date to January 31 to give respondents an additional month to submit the requisite information. Together, these proposed changes to 50 CFR 21.47 and 21.48 would provide a uniform annual reporting date for these two depredation orders.

In addition, we propose to update both depredation orders to remove the requirements for cormorant control activities around bald eagles (*Haliaeetus leucocephalus*) and bald eagle nests. These requirements for bald eagles and bald eagle nests were included in the depredation orders because, at that time, the species was protected by the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). The bald eagle has since been removed from the Federal List of Endangered and Threatened Wildlife (72 FR 37345; July 9, 2007), so the requirements should no longer apply.

Lastly, we propose to revise the depredation orders to recommend use of the National Bald Eagle Management Guidelines for both depredation orders. These management guidelines were adopted in 2007 (72 FR 31156; June 5, 2007). They provide guidance to land managers, landowners, and others as to how to avoid disturbing bald eagles and their nests.

Public Comments

You may submit your comments and materials concerning our proposed rule and DEA by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by email or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

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. OIRA 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 (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), 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 effect of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act. The regulatory changes we are proposing to the depredation orders at 50 CFR 21.47 and 21.48 would provide long-term assurance that State and tribal resource management agencies could continue to manage double-crested cormorant problems under the terms and conditions of the depredation orders and gather data on the effects of double-crested cormorant control actions and would bring the two depredation orders in line with our current regulations and practices. These changes would not have a significant economic impact on a substantial number of small entities, so a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804 (2)). It would not have a significant impact on a substantial number of small entities.

a. This rule would not have an annual effect on the economy of $100 million or more.

b. This rule would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, tribal, or local government agencies, or geographic regions.

c. This rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule would not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. The proposed revisions would not have significant effects. The proposed regulation would very minimally affect small government activities by changing the annual reporting date for 50 CFR 21.48.

b. This rule would not produce a Federal mandate of $100 million or more in any year. It would not be a ''significant regulatory action.''

Takings

This rule does not contain a provision for taking of private property. In accordance with Executive Order 12630, a takings implication assessment is not required.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a federalism summary impact statement under Executive Order 13132. It would not interfere with the States' abilities to manage themselves or their funds. No economic impacts are expected to result from the removal of the expiration dates from, or the other changes proposed to, the depredation orders.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C 3501 et seq.). The information collection requirements at 50 CFR 21.47 and 21.48 are approved under OMB control number 1018–0121, which expires on February 29, 2016. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f), and U.S. Department of the Interior regulations at 43 CFR part 46. We have completed a draft environmental assessment, and have determined that this action would have neither a significant effect on the quality of the human environment, nor unresolved conflicts concerning uses of available resources.

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, and 512 DM 2, we have determined that there are no potential effects on Federally recognized Indian Tribes from the proposed regulations change. The proposed regulations changes would not interfere with Tribes' abilities to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule, if adopted, would only affect depredation control of double-crested cormorants, and would not affect energy supplies, distribution, or use. This action would not be a significant energy action, and no Statement of Energy Effects is required.

Compliance with Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried 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 [critical] habitat'' (16 U.S.C. 1536(a)(2)). The proposed regulations changes would not affect listed species.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Does the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble help you to understand the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240–0001. You also may email comments to *Exsec@ios.doi.gov*.

Literature Cited

U.S. Fish and Wildlife Service. 2003. Final Environmental Impact Statement:

Double-Crested Cormorant Management. Available at *http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/Cormorant/Cormorant FEIS.pdf*.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons described in the preamble, we propose to amend subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—MIGRATORY BIRD PERMITS

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

Authority: 16 U.S.C. 703–712.

■ 2. Amend § 21.47 as follows:
■ a. By revising paragraph (d)(8)(i) to read as set forth below;
■ b. By removing the words ''and bald eagles'' from paragraph (d)(8)(ii);
■ c. By removing the words ''or bald eagles'' from paragraph (d)(8)(iii);
■ d. By adding a new paragraph (d)(8)(iv) to read as set forth below;
■ e. By removing the word ''Each'' and adding in its place the words ''By January 31 each'' at the beginning of paragraph (d)(9)(iii); and
■ f. By removing the word ''2014'' in paragraph (f) and adding in its place the word ''2019.''

§ 21.47 Depredation order for double-crested cormorants at aquaculture facilities.

* * * * *

(d) * * *

(8) * * *

(i) To protect wood storks, the following conservation measures must be observed anywhere Endangered Species Act protection applies to this species: all control activities are allowed if the activities occur more than 1,500 feet from active wood stork nesting colonies, more than 1,000 feet from active wood stork roost sites, and more than 750 feet from feeding wood storks.

* * * * *

(iv) We recommend that any agency or its agents or any individual or company planning to implement control activities that may affect bald eagles comply with the National Bald Eagle Management Guidelines (*http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BaldEagle/NationalBaldEagle ManagementGuidelines.pdf*) in conducting the activities.

* * * * *

■ 3. Amend § 21.48 as follows:
■ a. In the introductory text of paragraph (d)(8)(i), by removing the words ''wood storks, and bald eagles'' and adding in their place the words ''and wood storks'';
■ b. In paragraphs (d)(8)(i)(A) and (d)(8)(i)(B), by removing the words ''or occur more than 750 feet from active bald eagle nests;'' in each place that they occur;
■ c. By adding a new paragraph (d)(8)(i)(D) to read as set forth below;
■ d. By revising paragraph (d)(11) to read as set forth below; and
■ e. By removing the word ''2014'' in paragraph (f) and adding in its place the word ''2019.''

§ 21.48 Depredation order for double-crested cormorants to protect public resources.

* * * * *

(d) * * *

(8) * * *

(i) * * *

(D) We recommend that any agency or its agents planning to implement control activities that may affect bald eagles comply with the National Bald Eagle Management Guidelines (*http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/Bald Eagle/NationalBaldEagleManagement Guidelines.pdf*) in conducting the activities.

* * * * *

(11) Each agency conducting control activities under the provisions of this regulation must provide annual reports, as described in paragraph (d)(10) of this section, to the appropriate Service Regional Migratory Bird Permit Office by January 31 for control activities undertaken the previous calendar year. We will regularly review agency reports and will periodically assess the overall impact of this program to ensure compatibility with the long-term conservation of double-crested cormorants and other resources.

* * * * *

Dated: February 26, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–04824 Filed 3–4–14; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 79, No. 43

Wednesday, March 5, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 28, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 4, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Brucellosis in Sheep, Goats, Horses, and Payment of Indemnity.

OMB Control Number: 0579–0185.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 (7 U.S.C. 8301), is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The agency charged with carrying out this disease prevention mission is the Animal and Plant Health Inspection Service (APHIS). Disease prevention is the most effective method for maintaining a healthy animal population and enhancing APHIS' ability to compete in the world market of animal and animal product trade. Brucellosis is an infectious disease of animals and humans caused by the bacteria of the genus Brucella. It is mainly a disease of cattle, bison, and swine, sheep, goats, and horses are also susceptible, but are rarely infected. There is no economically feasible treatment for brucellosis in livestock. APHIS will collect information using APHIS forms VS 1–23, Indemnity Claim, VS 4–33, Test Records, and VS 1–27, Permit for Movement of Restricted Animals.

Need and Use of the Information: APHIS will collect information from the use of official seals and animal identification; indemnity claims, test records, and permits; and the submission of proof of destruction documentation and requests for extension of certain program-related deadlines. The information will provide indemnity to owners of sheep, goat, or horses destroyed because of brucellosis. Without the information, it would make it impossible for APHIS to administer an indemnity program for sheet, goats, and horses destroyed because of brucellosis.

Description of Respondents: Business or other for-profit; State, Local and Tribal Government.

Number of Respondents: 3.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8.

Animal and Plant Health Inspection Service

Title: Importation of Ovine Meat from Uruguay.

OMB Control Number: 0579–0372.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 (7 U.S.C. 8301), is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The agency charged with carrying out this disease prevention mission is the Animal and Plant Health Inspection Service (APHIS). Disease prevention is the most effective method for maintaining a healthy animal population and enhancing APHIS' ability to compete globally in animal and animal product trade. APHIS amended its animal import regulations in sections 94.1 and 94.22 to place certain restrictions on the importation of ovine meat from Uruguay into the United States. Under these regulations, APHIS must collect information, prepared by an authorized certified official of the Government of Uruguay, certifying that specific conditions for importation have been met.

Need and Use of the Information: Imported ovine meat from Uruguay must be accompanied by a foreign meat inspection certificate that is completed and signed by an authorized veterinary official of the Government of Uruguay. Without the information, APHIS would be unable to establish an effective defense against the entry and spread of foot-and-mouth disease and other animal diseases from Uruguay ovine product imports.

Description of Respondents: Federal Government.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 8.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–04884 Filed 3–4–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Arkion Life Sciences LLC of New Castle, Delaware, an exclusive license to U.S. Patent Application Serial No. 13/755,671, ''ULTRAVIOLET STRATEGY FOR AVIAN REPELLENCY'', filed on January 31, 2013.

DATES: Comments must be received on or before April 4, 2014.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Arkion Life Sciences LLC of New Castle, Delaware has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2014–04881 Filed 3–4–14; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Request for Approval of a New Information Collection

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Economic Research Service's intention to request approval for a new information collection for the study of ''Census of Users of the National Plant Germplasm System.'' This is a new collection to provide information on usage and expectations of future use among requestors of genetic resources from USDA's National Plant Germplasm System.

DATES: Comments on this notice must be received by May 5, 2014 to be assured of consideration.

Additional Information or Comments: Address all comments concerning this notice to Kelly Day Rubenstein, Resource and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, Mail Stop 1800, 1400 Independence Ave. SW., Washington, DC 20250. Comments may also be submitted via fax to the attention of Kelly Day Rubenstein at 202–694–4847 or via email to *kday@ers.usda.gov.* For further information contact Kelly Day Rubenstein at the address above, or telephone 202–694–5515.

SUPPLEMENTARY INFORMATION:

Title: Census of Users of the National Plant Germplasm System.

OMB Number: 0536–XXXX.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Abstract: The Census of Users of the National Plant Germplasm System will solicit data from the 7,207 institutional representatives who requested germplasm (i.e., living tissue from which plants can be grown) for any of ten crops including beans, barley, cotton, maize, sorghum, squash, soybeans, potato, rice, and wheat from the National Plant Germplasm System over a five year period. Each respondent will be asked to provide information via a web-based questionnaire. Legislative authority for the planned data collection is 7 U.S.C. 2204(a) and 7 U.S.C. 2661.

The information to be collected by the ''Census of Users of the National Plant Germplasm System'' is necessary to assess and understand the types and varieties of germplasm needed by breeders and other scientists in both the public and private sectors. This study will provide data not currently available to program officials and researchers, thereby broadening the scope of economic analyses of genetic enhancement, and in turn, enhancing R&D and productivity research at the Economic Research Service (ERS), the National Plant Germplasm System, and the National Germplasm Resource Laboratory. The database would contain a wealth of empirical information on germplasm use in breeding and research. This includes information by specific crops (e.g., the use of landraces in corn breeding, the search for biotic tolerance in wheat); the quantity of germplasm by type and purpose; institutional needs for germplasm (both public and private); and requestors' anticipated future use. This information will also assess biological traits that are needed for adaptation to climate change. Agriculture is highly geography-specific, given that growing regions vary by rainfall and temperature conditions, pest and disease pressures, and soil types. Accordingly, plant breeders work to develop unique varieties for different geographic locations. As a result, each requestor of NPGS germplasm is likely to have one characteristic—geographic location—which is unique and important to that institution's use of this germplasm, particularly in the context of global climate change. Moreover, it would be difficult to get adequate representation of the matrix of crops, germplasm types, and locations for some smaller crops (e.g., squash) without conducting a census of all germplasm requestors to the NPGS for any of the ten crops.

A web-based instrument will be used for information collection. It will be kept as simple and respondent-friendly as possible. Responses are voluntary. The study instrument is based on a mailed paper-based instrument used in the 2000 study, ''Demand for Genetic Resources from the National Plant Germplasm System.'' It was jointly developed by International Food Policy Research Institute (IFPRI), Auburn University's Department of Agricultural Economics and Rural Sociology, the National Germplasm Resources Lab of the National Plant Germplasm System, and the Economic Research Service. The instrument used in the 2000 study was administered by IFPRI and Auburn University and had a response rate of 35%. Study design for currently proposed study is consistent with that of the 2000 study in order to make comparisons across time. The frame for this census comprises all germplasm requestors to the NPGS for any of the ten crops in the last five years. Although the NPGS provided germplasm to any requestor free of cost, it also informed potential requestors and received their consent, at the time of a request was made, that their information could be used for activities relating to the service

that they had requested. Several measures will be taken to support the response rate for the proposed information collection:

• Information will be collected via the internet rather than by mail. This data collection mode is more convenient for intended respondents and will allow for rapid follow up with non-respondents.

• This information collection will be cosponsored by the National Germplasm Resources Laboratory of USDA, which is familiar to the recipients as it is the agency that provided the requested germplasm.

• A well planned recruitment protocol will include sending the instrument with a cover letter from a senior staff member of the National Germplasm Resources Laboratory, who will be an individual familiar to many of the recipients. It also includes up to three reminder emails to non-respondents.

Should the response rate fall below 80%, a non-response bias study will be conducted. The web-based instrument was pretested for ease of use by fewer than 9 germplasm requestors from USDA Agricultural Research Service (ARS) and the average time spent completing the forms was 11 minutes.

Information from the Census of Users of the National Plant Germplasm System will be used for statistical purposes only and reported only in aggregate or statistical form. A public use data file will be created from this information collection. ERS does not intend to invoke CIPSEA or any other data protection statute for this collection, because it will not collect any sensitive or personal identifiable information.

Estimate of Burden: In order to answer our research question about the use of germplasm for adaptation to climate change, a census is needed to pinpoint geo-spatial demand for germplasm. Thus, all 7,207 requestors of germplasm will be asked to fill out a web instrument once during a one month data collection period; non-respondents will receive three reminder emails. 80% of requestors are assumed to provide a response to one of the four emailed instruments. The estimated time of response is to average 0.197 hour. This average includes time spent to complete questionnaire and reading reminder emails. 20% will be non-respondents and will incur less than 1 minute of time to read the material. Thus, response times are estimated adding an additional minute for each reminder sent, for a total of four minutes for requestors who never respond. These estimates of respondent burden are based on pretesting by ARS scientists, conducted by the National Germplasm Resources Laboratory of the National Plant Germplasm System.

Type of Respondents: Respondents includes all individuals or institutions who requested germplasm for any of the aforesaid ten crops from the National Plant Germplasm System over the five year period as defined by this information collection.

Estimated Total Number of Respondents: 7,207.

Estimated Total Annual Burden on Respondents: 1,231.2 hours.

Comments: All written comments received will be available for public inspection in the Resource Center of the Economic Research Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 355 E St. SW., Room 04P33, Washington, DC 20024–4221. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Date: February 19, 2014.

Mary Bohman,

Administrator, Economic Research Service.

[FR Doc. 2014–04850 Filed 3–4–14; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed collection; Comment Request—Supplemental Nutrition Assistance Program (SNAP), Store Applications, Forms FNS–252, FNS–252–E, FNS–252–FE, FNS–252–R, FNS–252–2 and FNS–252–C

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 the proposed collection. This is a revision of a currently approved collection in the Supplemental Nutrition Assistance Program and concerns Retail Store Applications (Forms FNS–252; FNS–252–E; FNS–252–R; FNS–252–2; and FNS–252–C).

DATES: Written comments must be received on or before May 5, 2014.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments may be sent to: Shelly Pierce, Chief, Retailer Administration Branch, Supplemental Nutrition Assistance Program, Retailer Policy and Management Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 438, Alexandria, VA 22302. Comments may be faxed to the attention of Ms. Pierce at (703) 305–1863 or via email to: *RPMDHQ-WEB@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 FNS office located at 3101 Park Center Drive, Room 438, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday).

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 Shelly Pierce at *RPMDHQ-WEB@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Supplemental Nutrition Assistance Program (SNAP)—Store Applications.

Form Number: FNS–252; 252–E; 252–FE; 252–R; 252–2; and 252–C.

OMB Number: 0584–0008.

Expiration Date: July 31, 2014.

Type of Request: Revision of a currently approved collection of information.

Abstract: Section 9(a) of the Food and Nutrition Act of 2008, as amended, (the Act) (7 U.S.C. 2011 et. seq.) requires that FNS determine the eligibility of retail food stores and certain food service organizations to accept SNAP benefits and to monitor them for compliance and continued eligibility and to ensure program integrity.

Part of FNS' responsibility is to accept applications from retail food stores that wish to participate in SNAP, review the applications in order to determine whether applicants meet eligibility requirements, make determinations whether to grant or deny authorization to accept SNAP benefits and to ensure program integrity. There are four forms designed for that purpose and approved under the Office of Management and Budget (OMB) clearance number 0584–0008—the Supplemental Nutrition Assistance Program Application for Stores, Form FNS–252 (English and Spanish) and FNS–252–E (paper and online version respectively); the Meal Service Application, Form FNS–252–2; and the Corporate Supplemental Application, Form FNS–252–C used for individual (chain) stores under a corporation.

FNS is responsible for reviewing retail food store applications at least once every five years to ensure that each firm is under the same ownership and continues to meet eligibility guidelines. In order to accomplish this regulatory requirement, FNS collects information from retail food stores using the Supplemental Nutrition Assistance Program Application for Stores—Reauthorization, Form FNS–252–R.

During authorization or reauthorization, FNS may conduct an on-site store visit of the firm. The store visit of the firm helps FNS confirm that the information provided on the application is correct. An FNS representative or store visit contractor obtains permission to fill in the store visit checklist, photograph the store and asks the store owner or manager about the continued ownership of the store.

Currently, individual retail food stores and wholesale food concerns, along with farmers' markets and produce stands complete and submit forms FNS–252 and FNS–252–E. A farmers' market is defined as a multi-stall market at which farmer-producers sell agricultural products directly to the general public at a central or fixed location. FNS has received comments from various stakeholders including farmers and farmer's market advocates that the application title; retail food store questions; instructions and terminology do not address their business process and practices; and may be confusing to this unique group of respondents.

In order to reduce confusion and address any barriers to program participation respondents may have, FNS is creating a new online application specifically for farmers' markets, form FNS–252–FE, Supplemental Nutrition Assistance Program Farmers' Market Application. Data collected on form FNS–252–FE will be modified from the approved information collection associated with form FNS–252–E. Questions and instructions will be revised to clarify and/or re-phrase information requested, specific to the targeted group of respondents. The proposed information collection will otherwise be used in the same manner as the existing form FNS–252–E application.

Retailer and farmers' market applicants wishing to complete an online application (forms FNS–252–E and FNS–252–FE) must also first self-register for a Level 1 access account through the USDA eAuthentication system in order to initially start an online application. USDA eAuthentication facilitates the electronic authentication of an individual. FNS does not anticipate that form FNS–252–FE will increase the hourly burden estimate on respondents.

Upon OMB approval, FNS intends to incorporate form FNS–252–FE into the information collection associated with OMB No. 0584–0008, as these respondents are also considered the ''normal channels of trade'' for delivery of SNAP benefits to low-income households.

FNS also seeks to renew the current information collection, and minor enhancements are proposed to forms FNS–252 (English and Spanish), FNS–252–E and FNS–252–R in order to (1) clarify and/or re-word questions, instructions, and examples by making design and formatting changes to the paper and on-line application and help screens; (2) provide additional inventory stock examples; (3) revise the content and design formation of the ownership and signature titles on Form FNS–252 to be consistent with this information found on Form FNS–252–R; and (4) add a new, optional question, for retailers to provide additional information or comments to FNS. The types of additional information or comments could include any special circumstances that the retailer would want FNS to know, or who FNS should contact for questions about the application.

FNS is also revising Form FNS–252–2 in order to (1) expand the meal service type categories regarding private ownership and meal delivery service entries; (2) add a meal service location address; (3) delete ''optional'' and add ''required'' to email address; and (4) revise the Agreement and Signature section to further clarify information regarding violations also pertain to individual(s) completing the application.

FNS is amending all SNAP application forms, where applicable to (1) expand the Use and Disclosure section—routine uses to clarify the use of information for conducting computer matches; (2) to collect an email address for each owner; add a new question asking if the applicant has other stores that currently accept SNAP benefits; and (3) re-word or re-phrase the General Instruction section and on-line help screens to clarify information requested. The response time per respondent varies from 1 minute to 11.38 minutes, and we estimate the new burden, on average, to be 6.20 minutes per respondent. There is no recordkeeping burden associated with these forms.

Affected Public: Business for Profit; Retail food stores; Farmers' Markets.

Estimated Number of Respondents: The total estimated number of respondents is 151,859.

Estimated Number of Responses per Respondent: Respondents complete either 1 application form at initial authorization or 1 reauthorization application, as appropriate, for a total of 1 response each.

Estimated Total Annual Responses: 151,859.

Estimated Time per Response: 6.20 minutes (0.1056592). The estimated time response varies from 1 minute to 11.38 minutes depending on respondent group, as shown in the table below.

TABLE A—REPORTING ESTIMATE OF HOUR BURDEN: SUMMARY OF BURDEN—# 0584–0008

Affected public	Description of collection activity (a)	Form number (b)	Number respondents (c)	Number responses per respondent (d)	Total annual responses (cxd) (e)	Hours per response (f)	Total burden (exf) (g)
Retailers	Applications Received	252–E	29,335	1	29,355	0.16861	4,946
	E-Authentication	252–E and FNS–252–FE	30,347	1	30,347	0.13360	4,054
	Applications Received	252	3,372	1	3,372	0.18638	628
	Applications Received	252–FE	1,012	1	1,012	0.16861	171
	Applications Received	252–2	904	1	904	0.19416	175
	Applications Received	252–C	3,610	1	3,610	0.08350	301
	Store Visits		40,667	1	40,667	0.01670	679
	Reauthorization	252–R	42,614	1	42,614	0.11944	5,090
Total Reporting Burden			151,859	1	151,859		16,045
SUMMARY OF BURDEN FOR THIS COLLECTION.			151,859	1	151,859	0.1056592	16,045

Dated: February 26, 2014.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2014–04786 Filed 3–4–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (''Department'') announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children Program (WIC). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

DATES: *Effective Date:* July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Donna Hines, Chief, Policy Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice is exempt from review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, Subpart V, 48 FR 29100, June 24, 1983, and 49 FR 22675, May 31, 1984).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(d)(2)(A)), requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income-eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2014/2015 was published by the Department of Health and Human Services (HHS) at 79 FR 3593, January 22, 2014. The guidelines published by HHS are referred to as the ''poverty guidelines.''

Section 246.7(d)(1) of the WIC regulations (Title 7, Code of Federal Regulations) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the Richard B. Russell National School Lunch Act for reduced-price school meals, or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time, the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 2014, through June 30, 2015. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid Program established under Title XIX of the Social Security Act (42 U.S.C. 1396, et seq.). State agencies may coordinate implementation with the revised Medicaid guidelines, i.e., earlier in the year, but in no case may implementation take place later than July 1, 2014.

State agencies that do not coordinate implementation with the revised

Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 2014. The first table of this Notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all Territories, including Guam.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 2014 to June 30, 2015]

Household size	Federal poverty guidelines—100%					Reduced price meals—185%				
	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
1	$11,670	$973	$487	$449	$225	$21,590	$1,800	$900	$831	$416
2	15,730	1,311	656	605	303	29,101	2,426	1,213	1,120	560
3	19,790	1,650	825	762	381	36,612	3,051	1,526	1,409	705
4	23,850	1,988	994	918	459	44,123	3,677	1,839	1,698	849
5	27,910	2,326	1,163	1,074	537	51,634	4,303	2,152	1,986	993
6	31,970	2,665	1,333	1,230	615	59,145	4,929	2,465	2,275	1,138
7	36,030	3,003	1,502	1,386	693	66,656	5,555	2,778	2,564	1,282
8	40,090	3,341	1,671	1,542	771	74,167	6,181	3,091	2,853	1,427
Each add'l family member add	+ 4,060	+ 339	+ 170	+ 157	+ 79	+ 7,511	+ 626	+ 313	+ 289	+ 145
Alaska										
1	$14,580	$1,215	$608	$561	$281	$26,973	$2,248	$1,124	$1,038	$519
2	19,660	1,639	820	757	379	36,371	3,031	1,516	1,399	700
3	24,740	2,062	1,031	952	476	45,769	3,815	1,908	1,761	881
4	29,820	2,485	1,243	1,147	574	55,167	4,598	2,299	2,122	1,061
5	34,900	2,909	1,455	1,343	672	64,565	5,381	2,691	2,484	1,242
6	39,980	3,332	1,666	1,538	769	73,963	6,164	3,082	2,845	1,423
7	45,060	3,755	1,878	1,734	867	83,361	6,947	3,474	3,207	1,604
8	50,140	4,179	2,090	1,929	965	92,759	7,730	3,865	3,568	1,784
Each add'l family member add	+ 5,080	+ 424	+ 212	+ 196	+ 98	+ 9,398	+ 784	+ 392	+ 362	+ 181
Hawaii										
1	$13,420	$1,119	$560	$517	$259	$24,827	$2,069	$1,035	$955	$478
2	18,090	1,508	754	696	348	33,467	2,789	1,395	1,288	644
3	22,760	1,897	949	876	438	42,106	3,509	1,755	1,620	810
4	27,430	2,286	1,143	1,055	528	50,746	4,229	2,115	1,952	976
5	32,100	2,675	1,338	1,235	618	59,385	4,949	2,475	2,285	1,143
6	36,770	3,065	1,533	1,415	708	68,025	5,669	2,835	2,617	1,309
7	41,440	3,454	1,727	1,594	797	76,664	6,389	3,195	2,949	1,475
8	46,110	3,843	1,922	1,774	887	85,304	7,109	3,555	3,281	1,641
Each add'l family member add	+ 4,670	+ 390	+ 195	+ 180	+ 90	+ 8,640	+ 720	+ 360	+ 333	+ 167

Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

Authority: 42 U.S.C. 1786.

Dated: February 26, 2014.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2014–04787 Filed 3–4–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals and free milk for the period from July 1, 2014 through June 30, 2015. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program. The annual adjustments are required by section 9 of the Richard B. Russell National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

DATES: *Effective Date:* July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, Chief, School Programs Branch, Child Nutrition Programs, Food and Nutrition Service (FNS), USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2590.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice has been determined to be not significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

The affected programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556, No. 10.558 and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires

intergovernmental consultation with State and local officials. (See 7 CFR part 3015, Subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National School Lunch Program (7 CFR part 210), the Commodity School Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Summer Food Service Program (7 CFR part 225) and Child and Adult Care Food Program (7 CFR part 226), and the guidelines for free milk in the Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in accordance with applicable program rules.

Definition of Income

In accordance with the Department's policy as provided in the Food and Nutrition Service publication *Eligibility Manual for School Meals,* ''income,'' as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources that would be available to pay the price of a child's meal.

''Income,'' as the term is used in this Notice, does *not* include any income or benefits received under any Federal programs that are excluded from consideration as income by any statutory prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the Richard B. Russell National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 2014 through June 30, 2015. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2014 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar.

This Notice displays only the annual Federal poverty guidelines issued by the Department of Health and Human Services because the monthly and weekly Federal poverty guidelines are not used to determine the Income Eligibility Guidelines. The chart details the free and reduced price eligibility criteria for monthly income, income received twice monthly (24 payments per year), income received every two weeks (26 payments per year), and weekly income.

Income calculations are made based on the following formulas: Monthly income is calculated by dividing the annual income by 12; twice monthly income is computed by dividing annual income by 24; income received every two weeks is calculated by dividing annual income by 26; and weekly income is computed by dividing annual income by 52. All numbers are rounded upward to the next whole dollar. The numbers reflected in this notice for a family of four in the 48 contiguous states, the District of Columbia, Guam and the territories represent an increase of 1.3% over last year's level for a family of the same size. The income eligibility guidelines table follows below.

Authority: (42 U.S.C. 1758(b)(1)).

Dated: February 26, 2014.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 2014 to June 30, 2015]

Household size	Federal poverty guidelines	Reduced price meals—185%					Free meals—130%				
	Annual	Annual	Monthly	Twice per month	Every two weeks	Weekly	Annual	Monthly	Twice per month	Every two weeks	Weekly
48 CONTIGUOUS STATES, DISTRICT OF COLUMBIA, GUAM, AND TERRITORIES											
1	11,670	21,590	1,800	900	831	416	15,171	1,265	633	584	292
2	15,730	29,101	2,426	1,213	1,120	560	20,449	1,705	853	787	394
3	19,790	36,612	3,051	1,526	1,409	705	25,727	2,144	1,072	990	495
4	23,850	44,123	3,677	1,839	1,698	849	31,005	2,584	1,292	1,193	597
5	27,910	51,634	4,303	2,152	1,986	993	36,283	3,024	1,512	1,396	698
6	31,970	59,145	4,929	2,465	2,275	1,138	41,561	3,464	1,732	1,599	800
7	36,030	66,656	5,555	2,778	2,564	1,282	46,839	3,904	1,952	1,802	901
8	40,090	74,167	6,181	3,091	2,853	1,427	52,117	4,344	2,172	2,005	1,003
For each add'l family member, add	4,060	7,511	626	313	289	145	5,278	440	220	203	102
ALASKA											
1	14,580	26,973	2,248	1,124	1,038	519	18,954	1,580	790	729	365
2	19,660	36,371	3,031	1,516	1,399	700	25,558	2,130	1,065	983	492
3	24,740	45,769	3,815	1,908	1,761	881	32,162	2,681	1,341	1,237	619
4	29,820	55,167	4,598	2,299	2,122	1,061	38,766	3,231	1,616	1,491	746
5	34,900	64,565	5,381	2,691	2,484	1,242	45,370	3,781	1,891	1,745	873
6	39,980	73,963	6,164	3,082	2,845	1,423	51,974	4,332	2,166	1,999	1,000

INCOME ELIGIBILITY GUIDELINES—Continued

[Effective from July 1, 2014 to June 30, 2015]

Household size	Federal poverty guidelines	Reduced price meals—185%					Free meals—130%				
	Annual	Annual	Monthly	Twice per month	Every two weeks	Weekly	Annual	Monthly	Twice per month	Every two weeks	Weekly
7	45,060	83,361	6,947	3,474	3,207	1,604	58,578	4,882	2,441	2,253	1,127
8	50,140	92,759	7,730	3,865	3,568	1,784	65,182	5,432	2,716	2,507	1,254
For each add'l family member, add	5,080	9,398	784	392	362	181	6,604	551	276	254	127
HAWAII											
1	13,420	24,827	2,069	1,035	955	478	17,446	1,454	727	671	336
2	18,090	33,467	2,789	1,395	1,288	644	23,517	1,960	980	905	453
3	22,760	42,106	3,509	1,755	1,620	810	29,588	2,466	1,233	1,138	569
4	27,430	50,746	4,229	2,115	1,952	976	35,659	2,972	1,486	1,372	686
5	32,100	59,385	4,949	2,475	2,285	1,143	41,730	3,478	1,739	1,605	803
6	36,770	68,025	5,669	2,835	2,617	1,309	47,801	3,984	1,992	1,839	920
7	41,440	76,664	6,389	3,195	2,949	1,475	53,872	4,490	2,245	2,072	1,036
8	46,110	85,304	7,109	3,555	3,281	1,641	59,943	4,996	2,498	2,306	1,153
For each add'l family member, add	4,670	8,640	720	360	333	167	6,071	506	253	234	117

[FR Doc. 2014–04788 Filed 3–4–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[2/4/2014 through 2/27/2014]

Firm name	Firm address	Date accepted for investigation	Product(s)
Pro-Tech Interconnect Solutions, LLC.	4300 Peavey Road, Chaska, MN 55318.	2/25/2014	The firm manufactures printed circuit boards.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: February 27, 2014.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2014–04816 Filed 3–4–14; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Progress Report on Cooperative Halibut Prohibited Species Catch Minimization

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 5, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW.,

Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or *Patsy.Bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

The North Pacific Fisheries Management Council (Council) passed a motion in February 2014 requesting that each sector in the Bering Sea and Aleutian Islands Management Area (BSAI) groundfish fisheries voluntarily provide a report to the Council on progress for implementing measures in their cooperative and inter-cooperative agreements to minimize the incidental catch of halibut. These progress reports are to be provided to the Council at its June 2014 meeting.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 6.

Estimated Time per Response: 5 hours.

Estimated Total Annual Burden Hours: 30.

Estimated Total Annual Cost to Public: $10 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 28, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–04854 Filed 3–4–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD107

Fisheries of the South Atlantic and the Gulf of Mexico; Southeast Data, Assessment and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 38 Assessment Workshop for South Atlantic and Gulf of Mexico King Mackerel.

SUMMARY: The SEDAR 38 assessment of the South Atlantic and Gulf of Mexico King Mackerel will consist of: a Data Workshop; an Assessment Workshop and webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 38 Assessment Workshop will be held from 1 p.m. on March 24, 2014 until 12 p.m. on March 28, 2014; the Assessment webinars and Review Workshop dates and times will publish in a subsequent issue in the **Federal Register**. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: *Meeting Address:* The SEDAR 38 Assessment Workshop will be held at the Courtyard Miami Coconut Grove, 2649 South Bayshore Drive, Miami, FL 33133; telephone: (800) 321–2211.

SEDAR Address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three step process including: (1) Data Workshop; (2) Assessment Process utilizing a workshop and webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Workshop agenda are as follows:

1. Participants will use datasets and initial assessment analysis recommended from the Data Workshop to employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act,

provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 28, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–04872 Filed 3–4–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD126

Identification of Nations Engaged in Illegal, Unreported, or Unregulated Fishing, Bycatch, or Shark Fishing

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

ACTION: Notice; request for information.

SUMMARY: NMFS is seeking information regarding nations whose vessels are engaged in illegal, unreported, or unregulated (IUU) fishing, bycatch of protected living marine resources (PLMRs), and/or fishing activities in waters beyond any national jurisdiction that target or incidentally catch sharks. Such information will be reviewed for the purposes of the identification of nations pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act).

DATES: Information should be received on or before May 30, 2014.

ADDRESSES: Information should be submitted to NMFS Office of International Affairs, Attn.: MSRA Information, F/IA 1315 East-West Highway, Silver Spring, MD 20910. Email address: *IUU.PLMR.Sharks@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kristin Rusello, 301–427–8376.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) amended the Moratorium Protection Act (16 U.S.C. 1826d–k) to require actions be taken by the United States to strengthen international fishery management organizations and address IUU fishing and bycatch of PLMRs. The Shark Conservation Act of 2010 (S.850) further amended the Moratorium Protection Act by requiring that actions be taken by the United States to strengthen shark conservation.

Specifically, the Moratorium Protection Act requires the Secretary of Commerce (Secretary) to identify in a biennial report to Congress those nations whose fishing vessels are engaged, or have been engaged at any point during the preceding two years, in IUU fishing. The definition of IUU fishing can be found at 50 CFR 300.201 and includes:

(1) Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, bycatch reduction requirements, shark conservation measures, and data reporting;

(2) In the case of non-parties to an international fishery management agreement to which the United States is a party, fishing activities that would undermine the conservation of the resources managed under that agreement;

(3) Overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks;

(4) Fishing activity that has an adverse impact on vulnerable marine ecosystems such as seamounts, hydrothermal vents, cold water corals and other vulnerable marine ecosystems located beyond any national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement; and

(5) Fishing activities by foreign flagged vessels in U.S. waters without authorization of the United States.

In addition, the Secretary must identify in the biennial report those nations whose fishing vessels are engaged, or have been engaged in the previous calendar year in fishing activities in waters beyond any national jurisdiction that result in bycatch of a PLMR, or the U.S. exclusive economic zone (EEZ) that result in bycatch of a PLMR shared by the United States. In this context, PLMRs are defined as non-target fish, sea turtles, sharks, or marine mammals that are protected under U.S. law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna. PLMRs do not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement. A list of species considered as PLMRs for this purpose is available online at: *http://www.nmfs.noaa.gov/msa2007/docs/list_of_protected_lmr_act_022610.pdf.*

Furthermore, the Shark Conservation Act requires that the Secretary of Commerce identify nations in a biennial report to Congress whose fishing vessels are engaged, or have been engaged during the calendar year previous to the biennial report in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program to provide for the conservation of sharks, including measures to prohibit removal of any of the fins of a shark (including the tail) and discarding the carcass of the shark at sea, that is comparable to that of the United States, taking into account different conditions.

The third biennial report to Congress was submitted in January 2013 and is available online at: *http://www.nmfs.noaa.gov/ia/iuu/msra_page/2013_biennial_report_to_congress__jan_11__2013__final.pdf.* The report identified ten nations for IUU fishing, with one of the ten also identified for bycatch of a PLMR.

In accordance with the Moratorium Protection Act, NMFS has established procedures through regulations to identify and certify each nation whose vessels are engaged in IUU fishing, bycatch of PLMRs, and/or shark catch. Once identified, if a nation fails to take appropriate action and therefore fails to receive a positive certification, the fishing vessels of that nation would be subject to denial of entry to U.S. ports and other trade restrictive measures, including import prohibitions on certain fisheries products, under the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a). On January 16, 2013, NMFS published the latest final rule (78 FR 2013) implementing identification and certification procedures for IUU fishing, bycatch of PLMRs, and shark catch. That final rule is available online at: *http://www.nmfs.noaa.gov/ia/iuu/msra_page/shark_iuu_rule.pdf.* The rule provides information regarding the identification process and how the

information received will be used in that process. These regulations are also codified at 50 CFR 300.200 *et seq.*

In fulfillment of its requirements under the Moratorium Protection Act, NMFS is preparing the fourth biennial report to Congress, which will identify nations whose fishing vessels are engaged in IUU fishing or fishing practices that result in bycatch of PLMRs or shark catch in waters beyond any national jurisdiction without a regulatory program comparable to the United States. NMFS is soliciting information from the public that could assist in its identification of nations engaged in activities that meet the criteria described above for IUU fishing, PLMR bycatch, or shark catch in waters beyond any national jurisdiction. Some types of information that may prove useful to NMFS include:

- Documentation (photographs, etc.) of IUU activity or fishing vessels engaged in PLMR bycatch or catch of sharks on the high seas;
- Fishing vessel records;
- Trade data supporting evidence that a nation's vessels are engaged in shark catch;
- Reports from off-loading facilities, port-side government officials, enforcement agents, military personnel, port inspectors, transshipment vessel workers and fish importers;
- Sightings of vessels on RFMO IUU vessel lists;
- RFMO catch documents and statistical document programs;
- Nation's domestic regulations for bycatch and shark conservation and management;
- Species or fin identification guides for sharks in foreign waters;
- Appropriate certification programs;
- Action or inaction at the national level, resulting in non-compliance with RFMO conservation and management measures, such as exceeding quotas or catch limits, or failing to report or misreporting data of the nation's fishing activities; and
- Reports from governments, international organizations, or nongovernmental organizations.

NMFS will consider all available information, as appropriate, when making a determination whether or not to identify a particular nation in the biennial report to Congress. As stated previously, NMFS is limited in the data it may use as the basis of a nation's identification. This information includes IUU fishing activity in 2013 and 2014, bycatch of PLMRs in 2014, and shark fishing activity in waters beyond any national jurisdiction in 2014. Information should be as specific as possible as this will assist NMFS in its review. NMFS will consider several criteria when determining whether information is appropriate for use in making identifications, including:

- Corroboration of information;
- Whether multiple sources have been able to provide information in support of an identification;
- The methodology used to collect the information;
- Specificity of the information provided;
- Susceptibility of the information to falsification and alteration; and
- Credibility of the individuals or organization providing the information.

Dated: February 27, 2014.

Jean-Pierre Plé,

Acting Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2014–04889 Filed 3–4–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD110

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Russian River Estuary Management Activities

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the Sonoma County Water Agency (SCWA) for authorization to take marine mammals incidental to Russian River estuary management activities. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to SCWA to incidentally take marine mammals, by Level B harassment only, during the specified activity.

DATES: Comments and information must be received no later than April 4, 2014.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Laws@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to the Internet at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of SCWA's application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

National Environmental Policy Act (NEPA)

NMFS has prepared an Environmental Assessment (EA; 2010) and associated Finding of No Significant Impact (FONSI) in accordance with NEPA and the regulations published by the Council on Environmental Quality. These documents are posted at the aforementioned Internet address. Information in SCWA's application, NMFS' EA (2010), and this notice collectively provide the environmental information related to proposed issuance of this IHA for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to reaffirm the existing FONSI, prior to a final decision on the incidental take authorization request.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified area, the incidental, but not intentional, taking of small numbers of marine

mammals, providing that certain findings are made and the necessary prescriptions are established.

The incidental taking of small numbers of marine mammals may be allowed only if NMFS (through authority delegated by the Secretary) finds that the total taking by the specified activity during the specified time period will (i) have a negligible impact on the species or stock(s) and (ii) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). Further, the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking must be set forth, either in specific regulations or in an authorization.

The allowance of such incidental taking under section 101(a)(5)(A), by harassment, serious injury, death or a combination thereof, requires that regulations be established. Subsequently, a Letter of Authorization may be issued pursuant to the prescriptions established in such regulations, providing that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations. Under section 101(a)(5)(D), NMFS may authorize such incidental taking by harassment only, for periods of not more than 1 year, pursuant to requirements and conditions contained within an IHA. The establishment of prescriptions through either specific regulations or an authorization requires notice and opportunity for public comment.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' . . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' The former is termed Level A harassment and the latter is termed Level B harassment.

Summary of Request

On January 17, 2014, we received an adequate and complete request from SCWA for authorization of the taking of marine mammals incidental to Russian River estuary management activities in Sonoma County, California. SCWA proposes to manage the naturally-formed barrier beach at the mouth of the Russian River in order to minimize potential for flooding adjacent to the estuary and to enhance habitat for juvenile salmonids, as well as to conduct biological and physical monitoring of the barrier beach and estuary. Flood control-related breaching of barrier beach at the mouth of the river may include artificial breaches, as well as construction and maintenance of a lagoon outlet channel. The latter activity, an alternative management technique conducted to mitigate impacts of flood control on rearing habitat for Endangered Species Act (ESA)-listed salmonids, occurs only from May 15 through October 15 (hereafter, the ''lagoon management period''). Artificial breaching and monitoring activities may occur at any time during the one-year period of validity of the proposed IHA.

Breaching of naturally-formed barrier beach at the mouth of the Russian River requires the use of heavy equipment (e.g., bulldozer, excavator) and increased human presence, and monitoring in the estuary requires the use of small boats. As a result, pinnipeds hauled out on the beach or at peripheral haul-outs in the estuary may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Species known from the haul-out at the mouth of the Russian River or from peripheral haul-outs, and therefore anticipated to be taken incidental to the specified activity, include the harbor seal (*Phoca vitulina richardii*), California sea lion (*Zalophus californianus californianus*), and northern elephant seal (*Mirounga angustirostris*).

This would be the fifth such IHA, if issued. SCWA was first issued an IHA, valid for a period of one year, effective on April 1, 2010 (75 FR 17382), and was subsequently issued one-year IHAs for incidental take associated with the same activities, effective on April 21, 2011 (76 FR 23306), April 21, 2012 (77 FR 24471), and April 21, 2013 (78 FR 23746).

Description of the Specified Activity

Overview

The proposed action involves management of the estuary to prevent flooding while preventing adverse modification to critical habitat for ESA-listed salmonids. Requirements related to the ESA are described in further detail below. During the lagoon management period, this involves construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon. A perched lagoon, which is an estuary closed to tidal influence in which water surface elevation is above mean high tide, would reduce flooding while maintaining beneficial conditions for juvenile salmonids. Additional breaches of barrier beach may be conducted for the sole purpose of reducing flood risk. SCWA's proposed activity was described in detail in our notice of proposed authorization prior to the 2011 IHA (76 FR 14924; March 18, 2011); please see that document for a detailed description of SCWA's estuary management activities. Aside from the additional elements of a jetty study, described below, and minor additions to SCWA's biological and physical estuary monitoring measures, the specified activity remains the same as that described in the 2011 document.

Dates and Duration

The specified activity may occur at any time during the one-year timeframe (April 21, 2014, through April 20, 2015) of the proposed IHA, although construction and maintenance of a lagoon outlet channel would occur only during the lagoon management period. In addition, there are certain restrictions placed on SCWA during the harbor seal pupping season. These, as well as periodicity and frequency of the specified activities, are described in further detail below.

Specific Geographic Region

The estuary is located about 97 km (60 mi) northwest of San Francisco in Sonoma County, near Jenner, California (see Figure 1 of SCWA's application). The Russian River watershed encompasses 3,847 km^2 (1,485 mi^2) in Sonoma, Mendocino, and Lake Counties. The mouth of the Russian River is located at Goat Rock State Beach (see Figure 2 of SCWA's application); the estuary extends from the mouth upstream approximately 10 to 11 km (6–7 mi) between Austin Creek and the community of Duncans Mills (Heckel and McIver, 1994).

Detailed Description of Activities

Within the Russian River watershed, the U.S. Army Corps of Engineers (Corps), SCWA and the Mendocino County Russian River Flood Control and Water Conservation Improvement District (District) operate and maintain federal facilities and conduct activities in addition to the estuary management, including flood control, water diversion and storage, instream flow releases,

hydroelectric power generation, channel maintenance, and fish hatchery production. The Corps, SCWA, and the District conducted these activities for many years before salmonid species in the Russian River were protected under the ESA. Upon determination that these actions were likely to affect ESA-listed salmonids, as well as designated critical habitat for these species, formal consultation under section 7 of the ESA was initiated. In 2008, NMFS issued a Biological Opinion (BiOp) for Water Supply, Flood Control Operations, and Channel Maintenance conducted by the Corps, SCWA, and the District in the Russian River watershed (NMFS, 2008). This BiOp found that the activities—including SCWA's estuary management activities—authorized by the Corps and undertaken by SCWA and the District, if continued in a manner similar to recent historic practices, were likely to jeopardize the continued existence of ESA-listed salmonids and were likely to adversely modify critical habitat.

If a project is found to jeopardize a species or adversely modify its critical habitat, NMFS must develop and recommend a non-jeopardizing Reasonable and Prudent Alternative (RPA) to the proposed project, in coordination with the federal action agency and any applicant. A component of the RPA described in the 2008 BiOp requires SCWA to collaborate with NMFS and modify their estuary water level management in order to reduce marine influence (i.e., high salinity and tidal inflow) and promote a higher water surface elevation in the estuary in order to enhance the quality of rearing habitat for juvenile salmonids. A program of potential incremental steps prescribed to reach that goal includes adaptive management of the outlet channel. SCWA is also required to monitor the response of water quality, invertebrate production, and salmonids in and near the estuary to water surface elevation management in the estuary-lagoon system.

The analysis contained in the BiOp found that maintenance of lagoon conditions was necessary only for the lagoon management period. See NMFS' BiOp (2008) for details of that analysis. As a result of that determination, there are three components to SCWA's estuary management activities: (1) Lagoon outlet channel management, during the lagoon management period only, required to accomplish the dual purposes of flood risk abatement and maintenance of juvenile salmonid habitat; (2) traditional artificial breaching, with the sole goal of flood risk abatement; and (3) physical and biological monitoring. The latter activity, physical and biological monitoring, will remain the same as in past years but with the addition of a new monitoring activity. For 2014, acoustic telemetry of tagged steelhead will be added to the fisheries monitoring activities. As is the case for other monitoring activities in the estuary, this activity will involve at least two crew members in a small motorized boat travelling throughout the estuary. Therefore, as for other such activities in the estuary, the potential exists for disturbance of pinnipeds hauled-out at peripheral haul-outs. Please see the previously referenced **Federal Register** notice (76 FR 14924; March 18, 2011) for detailed discussion of lagoon outlet channel management, artificial breaching, and other physical and biological monitoring activities.

NMFS' BiOp determined that salmonid estuarine habitat may be improved by managing the Russian River estuary as a perched, freshwater lagoon and, therefore, stipulates as a RPA to existing conditions that the estuary be managed to achieve such conditions between May 15th and October 15th. In recognition of the complexity and uncertainty inherent in attempting to manage conditions in a dynamic beach environment, the BiOp stipulates that the estuarine water surface elevation RPA be managed adaptively, meaning that it should be planned, implemented, and then iteratively refined based on experience gained from implementation. The first phase of adaptive management, which has been implemented since 2010, is limited to outlet channel management (ESA PWA, 2012). The second phase requires study of and consideration of alternatives to a historical, dilapidated jetty present at Goat Rock State Beach (e.g., complete removal, partial removal).

Jetty Study—In addition to the previously described activities, SCWA proposes to conduct new monitoring work at the mouth of the Russian River during the period of this proposed IHA. This additional activity comprises a plan to study the effects of the jetty on the formation and maintenance of the Russian River estuary, as required under RPA 2 of the 2008 BiOp. Through several phases from 1929–1948, the jetty and associated seawall, roadway, and railroad were constructed, reinforced and then abandoned by various entities. The plan for study of the jetty is described in greater detail in SCWA's ''Feasibility of Alternatives to the Goat Rock State Beach Jetty for Managing Lagoon Water Surface Elevations—A Study Plan'' (ESA PWA, 2011). The jetty study was planned for 2012 and 2013 (and considered under the previous IHA) but did not occur, and is now planned for 2014.

The jetty, which is embedded in the barrier beach, may significantly affect some of the physical processes which determine lagoon water surface elevations. The proposed study would analyze the effects of the jetty on beach permeability and sand storage and transport. These physical processes are affected by the jetty, and, in turn, may affect seasonal water surface elevations and flood risk. Evaluating and quantifying these linkages will inform the development and evaluation of management alternatives for the jetty. The study would involve delineation of two study transects perpendicular to the beach barrier (see Figure 5 of SCWA's application) and installation of six monitoring wells to study water seepage rates. Additionally, in order to better understand the characteristics of the barrier beach substrate and the location and composition of buried portions of the jetty and associated structures, geophysical surveys would be conducted along the barrier beach. For a detailed description of the jetty study, please see our notice of proposed authorization prior to the 2013 IHA (78 FR 14985; March 8, 2013).

Description of Marine Mammals in the Area of the Specified Activity

Harbor seals are the most common species inhabiting the haul-out at the mouth of the Russian River (Jenner haul-out) and fine-scale local abundance data for harbor seals have been recorded extensively since 1972. California sea lions and northern elephant seals have also been observed infrequently in the project area. In addition to the primary Jenner haul-out, there are eight peripheral haul-outs nearby (see Figure 4 of SCWA's application). These include North Jenner and Odin Cove to the north; Pocked Rock, Kabemali, and Rock Point to the south; and Penny Logs, Patty's Rock, and Chalanchawi upstream within the estuary.

This section briefly summarizes the range, population status, threats and human-caused mortality, and range-wide as well as local abundance of these species. We have reviewed SCWA's detailed species descriptions, including life history information, for accuracy and completeness and refer the reader to Sections 3 and 4 of SCWA's application instead of reprinting the information here. The following information is summarized largely from NMFS Stock Assessment Reports, which may be accessed at *http://www.nmfs.noaa.gov/pr/sars/species.htm.*

Harbor Seals

Harbor seals inhabit coastal and estuarine waters and shoreline areas of the northern hemisphere from temperate to polar regions. The eastern North Pacific subspecies is found from Baja California north to the Aleutian Islands and into the Bering Sea. Multiple lines of evidence support the existence of geographic structure among harbor seal populations from California to Alaska (Carretta *et al.,* 2012). However, because stock boundaries are difficult to meaningfully draw from a biological perspective, three separate harbor seal stocks are recognized for management purposes along the west coast of the continental U.S.: (1) Inland waters of Washington, (2) outer coast of Oregon and Washington, and (3) California (Carretta *et al.,* 2012). Multiple stocks are recognized in Alaska. Placement of a stock boundary at the California-Oregon border is not based on biology but is considered a political and jurisdictional convenience (Carretta *et al.,* 2012). In addition, harbor seals may occur in Mexican waters, but these animals are not considered part of the California stock. Only the California stock is expected to be found in the project area.

California harbor seals are not protected under the ESA or listed as depleted under the MMPA, and are not considered a strategic stock under the MMPA because annual human-caused mortality (31) is significantly less than the calculated potential biological removal (PBR; 1,600). The population appears to be stabilizing at what may be its carrying capacity and the fishery mortality is declining.

The best abundance estimate of the California stock of harbor seals is 30,196 (CV = 0.157) and the minimum population size of this stock is 26,667 individuals (Carretta *et al.,* 2012). The entire population cannot be counted because some individuals are always away from haul-out sites. In addition, complete pup counts are not possible as for other species of pinniped because pups are precocious and enter the water almost immediately after birth. Therefore, the best abundance estimate is estimated by counting the number of seals ashore during the peak haul-out period (May to July) and by multiplying this count by a correction factor equal to the inverse of the estimated fraction of seals on land (Carretta *et al.,* 2012). The current abundance estimate, as well as the minimum population size, is based off of haul-out counts from 2009.

Counts of harbor seals in California increased from 1981 to 2004, with a calculated annual net productivity rate of 9.2 percent for the period 1983–1994 (Carretta *et al.,* 2012). However, maximum net productivity rates cannot be estimated because measurements were not made when the stock size was very small, and the default maximum net productivity rate for pinnipeds (12 percent per year) is considered appropriate for harbor seals (Carretta *et al.,* 2012).

Prior to state and federal protection and especially during the nineteenth century, harbor seals along the west coast of North America were greatly reduced by commercial hunting, with only a few hundred individuals surviving in a few isolated areas along the California coast (Carretta *et al.,* 2012). However, in the last half of this century, the population has increased dramatically. Data from 2004–09 indicate that 18 (CV = 0.73) California harbor seals are killed annually in commercial fisheries. In addition, California stranding database records for 2005–09 show an annual average of 12 such events, which is likely an underestimate because most carcasses are not recovered. Two Unusual Mortality Events (UME) of harbor seals in California occurred in 1997 and 2000 with the causes considered to be infectious disease (see *http://www.nmfs.noaa.gov/pr/health/mmume/* accessed January 30, 2014). All west coast harbor seals that have been tested for morbilliviruses were found to be seronegative, indicating that this disease is not endemic in the population and that this population is extremely susceptible to an epidemic of this disease (Ham-Lammé *et al.,* 1999).

Harbor seal pupping normally occurs at the Russian River from March until late June, and sometimes into early July. The Jenner haul-out is the largest in Sonoma County. A substantial amount of monitoring effort has been conducted at the Jenner haul-out and surrounding areas. Concerned local residents formed the Stewards' Seal Watch Public Education Program in 1985 to educate beach visitors and monitor seal populations. State Parks Volunteer Docents continue this effort towards safeguarding local harbor seal habitat. On weekends during the pupping and molting season (approximately March–August), volunteers conduct public outreach and record the numbers of visitors and seals on the beach, other marine mammals observed, and the number of boats and kayaks present.

Ongoing monthly seal counts at the Jenner haul-out were begun by J. Mortenson in January 1987, with additional nearby haul-outs added to the counts thereafter. In addition, local resident E. Twohy began daily observations of seals and people at the Jenner haul-out in November 1989. These datasets note whether the mouth at the Jenner haul-out was opened or closed at each observation, as well as various other daily and annual patterns of haul-out usage (Mortenson and Twohy, 1994). Recently, SCWA began regular baseline monitoring of the haul-out as a component of its estuary management activity. Table 1 shows average daily numbers of seals observed at the mouth of the Russian River from 1993–2005 and from 2009–13.

TABLE 1—AVERAGE DAILY NUMBER OF SEALS OBSERVED AT RUSSIAN RIVER MOUTH FOR EACH MONTH, 1993–2005; 2009–13

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1993	140	219	269	210	203	238	197	34	8	38	78	163
1994	138	221	243	213	208	212	246	98	26	31	101	162
1995	133	270	254	261	222	182	216	74	37	24	38	148
1996	144	175	261	247	157	104	142	65	17	29	76	139
1997	154	177	209	188	154	119	186	58	20	29	30	112
1998	119	151	192	93	170	213	232	53	33	21	93	147
1999	161	170	215	210	202	128	216	98	57	20	74	123
2000	151	185	240	180	158	245	256	63	46	50	86	127
2001	155	189	161	168	135	212	275	75	64	20	127	185
2002	117	12	20	154	134	213	215	89	43	26	73	126
2003	—	1	26	161	164	222	282	100	43	51	109	116
2004	2	5	39	180	202	318	307	35	40	47	68	61
2005	0	7	42	222	220	233	320	145	—	—	—	—

TABLE 1—AVERAGE DAILY NUMBER OF SEALS OBSERVED AT RUSSIAN RIVER MOUTH FOR EACH MONTH, 1993–2005; 2009–13—Continued

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mean, 1993–2005	118	137	167	191	179	203	238	76	36	32	79	134
2009	—	—	—	—	—	—	219	117	17	22	96	80
2010	66	84	129	136	109	136	267	111	59	25	89	26
2011	116	92	162	124	128	145	219	98	31	53	92	48
2012	108	74	115	169	164	166	156	128	100	71	137	51
2013	51	108	158	112	162	139	411	175	77	58	34	94
Mean, 2011–13	95	88	145	135	151	151	243	137	67	61	94	64

Data from 1993–2005 adapted from Mortenson and Twohy (1994) and E. Twohy (unpublished data). Data from 2009–13 collected by SCWA. Months represented by dash indicate periods where data were missing or incomplete.

The number of seals present at the Jenner haul-out generally declines during bar-closed conditions (Mortenson, 1996). SCWA's pinniped monitoring efforts from 1996 to 2000 focused on artificial breaching activities and their effects on the Jenner haul-out. Seal counts and disturbances were recorded from one to two days prior to breaching, the day of breaching, and the day after breaching (MSC, 1997, 1998, 1999, 2000; SCWA and MSC, 2001). In each year, the trend observed was that harbor seal numbers generally declined during a beach closure and increased the day following an artificial breaching event. Heckel and McIver (1994) speculated that the loss of easy access to the haul-out and ready escape to the sea during bar-closed conditions may account for the lower numbers. Table 2 shows average daily seal counts recorded during SCWA monitoring of breaching events from 1996–2000 and 2009–13, representing bar-closed conditions, when seal numbers decline.

TABLE 2—AVERAGE NUMBER OF HARBOR SEALS OBSERVED AT THE MOUTH OF THE RUSSIAN RIVER DURING BREACHING EVENTS (I.E., BAR-CLOSED CONDITIONS) BY MONTH

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1996–2000	—	—	—	173	103	100	75	17	5	22	11	—
2009–13	32	134	224	80	53	102	104	—	17	25	53	34

Dashes represent months when no estuary management events occurred.

Mortenson (1996) observed that pups were first seen at the Jenner haul-out in late March, with maximum counts in May. In this study, pups were not counted separately from other age classes at the haul-out after August due to the difficulty in discriminating pups from small yearlings. From 1989 to 1991, Hanson (1993) observed that pupping began at the Jenner haul-out in mid-April, with a maximum number of pups observed during the first two weeks of May. This corresponds with the peaks observed at Point Reyes, where the first viable pups are born in March and the peak is the last week of April to early May (SCWA, 2014). Based on this information, pupping season at the Jenner haul-out is conservatively defined here as March 15 to June 30.

California Sea Lions

California sea lions range from the Gulf of California north to the Gulf of Alaska, with breeding areas located in the Gulf of California, western Baja California, and southern California. Five genetically distinct geographic populations have been identified: (1) Pacific Temperate, (2) Pacific Subtropical, (3) Southern Gulf of California, (4) Central Gulf of California and (5) Northern Gulf of California (Schramm *et al.,* 2009). Rookeries for the Pacific Temperate population are found within U.S. waters and just south of the U.S.-Mexico border, and animals belonging to this population may be found form the Gulf of Alaska to Mexican waters off Baja California. Animals belonging to other populations (e.g., Pacific Subtropical) may range into U.S. waters during non-breeding periods. For management purposes, a stock of California sea lions comprising those animals at rookeries within the U.S. is defined (i.e., the U.S. stock of California sea lions) (Carretta *et al.,* 2012). Pup production at the Coronado Islands rookery in Mexican waters is considered an insignificant contribution to the overall size of the Pacific Temperate population (Lowry and Maravilla-Chavez, 2005).

California sea lions are not protected under the ESA or listed as depleted under the MMPA. Total annual human-caused mortality (at least 431) is substantially less than the PBR (estimated at 9,200 per year); therefore, California sea lions are not considered a strategic stock under the MMPA. There are indications that the California sea lion may have reached or is approaching carrying capacity, although more data are needed to confirm that leveling in growth persists (Carretta *et al.,* 2012).

The best abundance estimate of the U.S. stock of California sea lions is 296,750 and the minimum population size of this stock is 153,337 individuals (Carretta *et al.,* 2012). The entire population cannot be counted because all age and sex classes are never ashore at the same time; therefore, the best abundance estimate is determined from the number of births and the proportion of pups in the population, with censuses conducted in July after all pups have been born. Specifically, the pup count for rookeries in southern California from 2008 was adjusted for pre-census mortality and then multiplied by the inverse of the fraction of newborn pups in the population (Carretta *et al.,* 2012). The minimum population size was determined from counts of all age and sex classes that were ashore at all the major rookeries and haul-out sites in southern and central California during the 2007 breeding season, including all California sea lions counted during the July 2007 census at the Channel Islands in southern California and at haul-out sites located between Point Conception and Point Reyes, California (Carretta *et al.,* 2012). An additional unknown number

of California sea lions are at sea or hauled out at locations that were not censused and are not accounted for in the minimum population size.

Trends in pup counts from 1975 through 2008 have been assessed for four rookeries in southern California and for haul-outs in central and northern California. During this time period counts of pups increased at an annual rate of 5.4 percent, excluding six El Nino years when pup production declined dramatically before quickly rebounding (Carretta *et al.,* 2012). The maximum population growth rate was 9.2 percent when pup counts from the El Niño years were removed. However, the apparent growth rate from the population trajectory underestimates the intrinsic growth rate because it does not consider human-caused mortality occurring during the time series; the default maximum net productivity rate for pinnipeds (12 percent per year) is considered appropriate for California sea lions (Carretta *et al.,* 2012).

Historic exploitation of California sea lions include harvest for food by Native Americans in pre-historic times and for oil and hides in the mid-1800s, as well as exploitation for a variety of reasons more recently (Carretta *et al.,* 2012). There are few historical records to document the effects of such exploitation on sea lion abundance (Lowry *et al.,* 1992). Data from 2003–09 indicate that a minimum of 337 (CV = 0.56) California sea lions are killed annually in commercial fisheries. In addition, a summary of stranding database records for 2005–09 shows an annual average of 65 such events, which is likely a gross underestimate because most carcasses are not recovered. California sea lions may also be removed because of predation on endangered salmonids (17 per year, 2008–10) or incidentally captured during scientific research (3 per year, 2005–09) (Carretta *et al.,* 2012). Sea lion mortality has also been linked to the algal-produced neurotoxin domoic acid (Scholin *et al.,* 2000). There is currently a UME declaration in effect for California sea lions. Future mortality may be expected to occur, due to the sporadic occurrence of such harmful algal blooms. Beginning in January 2013, elevated strandings of California sea lion pups have been observed in Southern California, with live sea lion strandings nearly three times higher than the historical average. The causes of this UME are under investigation (*http://www.nmfs.noaa.gov/pr/health/mmume/californiasealions2013.htm;* accessed January 29, 2014).

Solitary California sea lions have occasionally been observed at or in the vicinity of the Russian River estuary (MSC, 1999, 2000), in all months of the year except June. Male California sea lions are occasionally observed hauled out at or near the Russian River mouth in most years: once in August 2009, January and December 2011, January 2012, and December 2013. Other individuals were observed in the surf at the mouth of the river or swimming inside the estuary. Juvenile sea lions were observed during the summer of 2009 at the Patty's Rock haul-out, and some sea lions were observed during monitoring of peripheral haul-outs in October 2009. The occurrence of individual California sea lions in the action area may occur year-round, but is infrequent and sporadic.

Northern Elephant Seals

Northern elephant seals gather at breeding areas, located primarily on offshore islands of Baja California and California, from approximately December to March before dispersing for feeding. Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, while females feed at sea south of 45° N (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993). Adults then return to land between March and August to molt, with males returning later than females, before dispersing again to their respective feeding areas between molting and the winter breeding season. Populations of northern elephant seals in the U.S. and Mexico are derived from a few tens or hundreds of individuals surviving in Mexico after being nearly hunted to extinction (Stewart *et al.,* 1994). Given the recent derivation of most rookeries, no genetic differentiation would be expected. Although movement and genetic exchange continues between rookeries, most elephant seals return to their natal rookeries when they start breeding (Huber *et al.,* 1991). The California breeding population is now demographically isolated from the Baja California population and is considered to be a separate stock.

Northern elephant seals are not protected under the ESA or listed as depleted under the MMPA. Total annual human-caused mortality (at least 10.4) is substantially less than the PBR (estimated at 4,382 per year); therefore, northern elephant seals are not considered a strategic stock under the MMPA. Modeling of pup counts indicates that the population has reached its Maximum Net Productivity Level, but has not yet reached carrying capacity (Carretta *et al.,* 2007).

The best abundance estimate of the California breeding population of northern elephant seals is 124,000 and the minimum population size of this stock is 74,913 individuals (Carretta *et al.,* 2007). The entire population cannot be counted because all age and sex classes are never ashore at the same time; therefore, the best abundance estimate is determined by counting the number of pups produced and multiplying by the inverse of the expected ratio of pups to total animals (McCann, 1985). Specifically, the estimated number of pups born in California in 2005 (35,549) was used to extrapolate via a multiplier of 3.5 suggested by Boveng (1988) and Barlow *et al.* (1993) for a rapidly growing population. The minimum population size was estimated by doubling the observed pup count (to account for the pups and their mothers) and adding 3,815 males and juveniles counted at the Channel Islands and central California sites in 2005 (Carretta *et al.,* 2007). An additional unknown number of northern elephant seals are at sea or hauled out at locations that were not censused and are not accounted for in the minimum population size.

Trends in pup counts from 1958 through 2005 show that northern elephant seal colonies are continuing to grow in California, but appear to be stable or slowly decreasing in Mexico (Stewart *et al.,* 1994; Carretta *et al.,* 2007). Although growth rates as high as 16 percent per year have been documented for elephant seal rookeries in the U.S. from 1959 to 1981 (Cooper and Stewart, 1983), much of this growth was supported by immigration from Mexico. The highest growth rate measured for the whole U.S./Mexico population was 8.3 percent between 1965 and 1977. A generalized logistic growth model indicates that the maximum population growth rate is 11.7 percent (Carretta *et al.,* 2007).

Data from 2000–05 indicate that a minimum of 8.8 (CV = 0.4) northern elephant seals are killed annually in commercial fisheries, including hook-and-line, gillnet, and trawl fisheries. In addition, drift gillnet fisheries exist along the entire Pacific coast of Baja California and may take animals from this population, although few quantitative data and no species-specific information are available (Carretta *et al.,* 2007). A summary of stranding database records for 2000–04 shows an annual average of 1.6 non-fishery related mortalities, which is likely a gross underestimate because most carcasses are not recovered.

Censuses of pinnipeds at the mouth of the Russian River have been taken at least semi-monthly since 1987. Elephant seals were noted from 1987–95, with one or two elephant seals typically

counted during May censuses, and occasional records during the fall and winter (Mortenson and Follis, 1997). A single, tagged northern elephant seal sub-adult was present at the Jenner haul-out from 2002–07. This individual seal, which was observed harassing harbor seals also present at the haul-out, was generally present during molt and again from late December through March. A single juvenile elephant seal was observed at the Jenner haul-out in June 2009 and, most recently, a sub-adult seal was observed in August 2013. The occurrence of individual northern elephant seals in the action area has generally been infrequent and sporadic in the past 10 years.

Potential Effects of the Specified Activity on Marine Mammals

A significant body of monitoring data exists for pinnipeds at the mouth of the Russian River. In addition, pinnipeds have co-existed with regular estuary management activity for decades, as well as with regular human use activity at the beach, and are likely habituated to human presence and activity. Nevertheless, SCWA's estuary management activities have the potential to disturb pinnipeds present on the beach or at peripheral haul-outs in the estuary. During breaching operations, past monitoring has revealed that some or all of the seals present typically move or flush from the beach in response to the presence of crew and equipment, though some may remain hauled-out. No stampeding of seals—a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus—has been documented since SCWA developed protocols to prevent such events in 1999. While it is likely impossible to conduct required estuary management activities without provoking some response in hauled-out animals, precautionary mitigation measures, described later in this document, ensure that animals are gradually apprised of human approach. Under these conditions, seals typically exhibit a continuum of responses, beginning with alert movements (e.g., raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed seals typically re-occupy the haul-out within minutes to hours of the stimulus. In addition, eight other haul-outs exist nearby that may accommodate flushed seals.

In the absence of appropriate mitigation measures, it is possible that pinnipeds could be subject to injury, serious injury, or mortality, likely through stampeding or abandonment of pups. However, based on a significant body of site-specific data, harbor seals are unlikely to sustain any harassment that may be considered biologically significant. Individual animals would, at most, flush into the water in response to maintenance activities but may also simply become alert or move across the beach away from equipment and crews. During 2013, SCWA observed that harbor seals are less likely to flush from the beach when the primary aggregation of seals is north of the breaching activity (please refer to Figure 2 of SCWA's application), meaning that personnel and equipment are not required to pass the seals. Four artificial breaching events were implemented in 2013, with two of these events occurring north of the primary aggregation and two to the south (at approximately 800 and 150 ft distance) (SCWA, 2014). In both of the former cases, all seals present eventually flushed to the water, but when breaching activity remained to the south of the haul-out, only 11 and 53 percent of seals, respectively, were flushed.

California sea lions and northern elephant seals have been observed as less sensitive to stimulus than harbor seals during monitoring at numerous other sites. For example, monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that while harbor seals flushed at a rate of 69 percent, California sea lions flushed at a rate of only 21 percent. The rate for elephant seals declined to 0.1 percent (VanBlaricom, 2010). In the event that either of these species is present during management activities, they would be expected to display a minimal reaction to maintenance activities—less than that expected of harbor seals.

Although the Jenner haul-out is not known as a primary pupping beach, pups have been observed during the pupping season; therefore, we have evaluated the potential for injury, serious injury, or mortality to pups. There is a lack of published data regarding pupping at the mouth of the Russian River, but SCWA monitors have observed pups on the beach. No births were observed during recent monitoring, but may be inferred based on signs indicating pupping (e.g., blood spots on the sand, birds consuming possible placental remains). Pup injury or mortality would be most likely to occur in the event of extended separation of a mother and pup, or trampling in a stampede. As discussed previously, no stampedes have been recorded since development of appropriate protocols in 1999. Any California sea lions or northern elephant seals present would be independent juveniles or adults; therefore, analysis of impacts on pups is not relevant for those species.

Similarly, the period of mother-pup bonding, critical time needed to ensure pup survival and maximize pup health, is not expected to be impacted by estuary management activities. Harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouf, 1985; Cottrell *et al.,* 2002; Burns *et al.,* 2005). Lawson and Renouf (1987) investigated harbor seal mother-pup bonding in response to natural and anthropogenic disturbance. In summary, they found that the most critical bonding time is within minutes after birth. As described previously, the peak of pupping season is typically concluded by mid-May, when the lagoon management period begins. As such, it is expected that mother-pup bonding would likely be concluded as well. The number of management events during the months of March and April has been relatively low in the past, and the breaching activities occur in a single day over several hours. In addition, mitigation measures described later in this document further reduce the likelihood of any impacts to pups, whether through injury or mortality or interruption of mother-pup bonding.

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (i.e., less than one day) and limited intensity (i.e., temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor been documented—in the years since appropriate protocols were established (see ''Mitigation'' for more details). Further, the continued, and increasingly heavy (Figure 4; SCWA, 2014), use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely.

Anticipated Effects on Habitat

The purposes of the estuary management activities are to improve summer rearing habitat for juvenile salmonids in the Russian River estuary and/or to minimize potential flood risk to properties adjacent to the estuary. These activities would result in temporary physical alteration of the Jenner haul-out, but are essential to conserving and recovering endangered salmonid species, as prescribed by the

BiOp. These salmonids are themselves prey for pinnipeds. In addition, with barrier beach closure, seal usage of the beach haul-out declines, and the three nearby river haul-outs may not be available for usage due to rising water surface elevations. Breaching of the barrier beach, subsequent to the temporary habitat disturbance, likely increases suitability and availability of habitat for pinnipeds. Biological and water quality monitoring would not physically alter pinniped habitat. Please see the previously referenced **Federal Register** notice (76 FR 14924; March 18, 2011) for a more detailed discussion of anticipated effects on habitat.

During SCWA's pinniped monitoring associated with artificial breaching activities from 1996 to 2000, the number of harbor seals hauled out declined when the barrier beach closed and then increased the day following an artificial breaching event (MSC, 1997, 1998, 1999, and 2000; SCWA and MSC, 2001). This response to barrier beach closure followed by artificial breaching has remained consistent in recent years and is anticipated to continue. However, it is possible that the number of pinnipeds using the haul-out could decline during the extended lagoon management period, when SCWA would seek to maintain a shallow outlet channel rather than the deeper channel associated with artificial breaching. Collection of baseline information during the lagoon management period is included in the monitoring requirements described later in this document. SCWA's previous monitoring, as well as Twohy's daily counts of seals at the sandbar (Table 1) indicate that the number of seals at the haul-out declines from August to October, so management of the lagoon outlet channel (and managing the sandbar as a summer lagoon) would have little effect on haul-out use during the latter portion of the lagoon management period. The early portion of the lagoon management period coincides with the pupping season. Past monitoring during this period, which represents some of the longest beach closures in the late spring and early summer months, shows that the number of pinnipeds at the haul-out tends to fluctuate, rather than showing the more straightforward declines and increases associated with closures and openings seen at other times of year (MSC, 1998). This may indicate that seal haul-out usage during the pupping season is less dependent on bar status. As such, the number of seals hauled out from May through July would be expected to fluctuate, but is unlikely to respond dramatically to the absence of artificial breaching events. Regardless, any impacts to habitat resulting from SCWA's management of the estuary during the lagoon management period are not in relation to natural conditions, but rather in relation to conditions resulting from SCWA's discontinued approach of artificial breaching during this period.

In summary, there will be temporary physical alteration of the beach. However, natural opening and closure of the beach results in the same impacts to habitat; therefore, seals are likely adapted to this cycle. In addition, the increase in rearing habitat quality has the goal of increasing salmonid abundance, ultimately providing more food for seals present within the action area. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

SCWA has proposed to continue the following mitigation measures, as implemented during the previous IHA, designed to minimize impact to affected species and stocks:

- SCWA crews would cautiously approach the haul-out ahead of heavy equipment to minimize the potential for sudden flushes, which may result in a stampede—a particular concern during pupping season.
- SCWA staff would avoid walking or driving equipment through the seal haul-out.
- Crews on foot would make an effort to be seen by seals from a distance, if possible, rather than appearing suddenly, again preventing sudden flushes.
- During breaching events, all monitoring would be conducted from the overlook on the bluff along Highway 1 adjacent to the haul-out in order to minimize potential for harassment.
- A water level management event may not occur for more than 2 consecutive days unless flooding threats cannot be controlled.

In addition, SCWA proposes to continue mitigation measures specific to pupping season (March 15–June 30), as implemented in the previous IHAs:

- SCWA will maintain a 1 week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.
- If a pup less than 1 week old is on the beach where heavy machinery would be used or on the path used to access the work location, the management action will be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA would consult with NMFS to determine the appropriate course of action. SCWA will coordinate with the locally established seal monitoring program (Stewards' Seal Watch) to determine if pups less than 1 week old are on the beach prior to a breaching event.
- Physical and biological monitoring will not be conducted if a pup less than 1 week old is present at the monitoring site or on a path to the site.

For all activities, personnel on the beach would include up to two equipment operators, three safety team members on the beach (one on each side of the channel observing the equipment operators, and one at the barrier to warn beach visitors away from the activities), and one safety team member at the overlook on Highway 1 above the beach. Occasionally, there would be two or more additional people (SCWA staff or regulatory agency staff) on the beach to observe the activities. SCWA staff would be followed by the equipment, which would then be followed by an SCWA vehicle (typically a small pickup truck, the vehicle would be parked at the previously posted signs and barriers on the south side of the excavation location). Equipment would be driven slowly on the beach and care would be taken to minimize the number of shut-downs and start-ups when the equipment is on the beach. All work would be completed as efficiently as possible, with the smallest amount of heavy equipment possible, to minimize disturbance of seals at the haul-out. Boats operating near river haul-outs during monitoring would be kept within posted speed limits and driven as far from the haul-outs as safely possible to minimize flushing seals.

We have carefully evaluated SCWA's proposed mitigation measures and considered their effectiveness in past implementation to preliminarily determine whether they are likely to

effect the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

- Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
- A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).
- A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only).
- A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only).
- Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time.
- For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of SCWA's proposed measures and on SCWA's record of management at the mouth of the Russian River including information from monitoring of SCWA's implementation of the mitigation measures as prescribed under the previous IHAs, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Any monitoring requirement we prescribe should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within defined zones of effect (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;
2. An increase in our understanding of how many marine mammals are likely to be exposed to stimuli that we associate with specific adverse effects, such as behavioral harassment or hearing threshold shifts;
3. An increase in our understanding of how marine mammals respond to stimuli expected to result in incidental take and how anticipated adverse effects on individuals may impact the population, stock, or species (specifically through effects on annual rates of recruitment or survival) through any of the following methods:
   - Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, e.g., received level, distance from source);
   - Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict pertinent information, e.g., received level, distance from source);
   - Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;
4. An increased knowledge of the affected species; or
5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

SCWA submitted a marine mammal monitoring plan as part of the IHA application. It can be found on the Internet at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The plan, which has been successfully implemented by SCWA under previous IHAs, may be modified or supplemented based on comments or new information received from the public during the public comment period. The purpose of this monitoring plan, which is carried out collaboratively with the Stewards of the Coasts and Redwoods (Stewards) organization, is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. SCWA has designed the plan both to satisfy the requirements of the IHA, and to address the following questions of interest:

1. Under what conditions do pinnipeds haul out at the Russian River estuary mouth at Jenner?
2. How do seals at the Jenner haul-out respond to activities associated with the construction and maintenance of the lagoon outlet channel and artificial breaching activities?
3. Does the number of seals at the Jenner haul-out significantly differ from historic averages with formation of a summer (May 15 to October 15) lagoon in the Russian River estuary?
4. Are seals at the Jenner haul-out displaced to nearby river and coastal haul-outs when the mouth remains closed in the summer?

Proposed Monitoring Measures

In summary, past monitoring includes the following, which is proposed to continue should an IHA be issued:

Baseline Monitoring—Seals at the Jenner haul-out are counted twice monthly for the term of the IHA. This baseline information will provide SCWA with details that may help to plan estuary management activities in the future to minimize pinniped interaction. This census begins at local dawn and continues for 8 hours. All seals hauled out on the beach are counted every 30 minutes from the overlook on the bluff along Highway 1 adjacent to the haul-out using spotting scopes. Monitoring may conclude for the day if weather conditions affect visibility (e.g., heavy fog in the afternoon). Counts are scheduled for 2 days out of each month, with the intention of capturing a low and high tide each in the morning and afternoon. Depending on how the sandbar is formed, seals may haul out in multiple groups at the mouth. At each 30-minute

count, the observer indicates where groups of seals are hauled out on the sandbar and provides a total count for each group. If possible, adults and pups are counted separately.

In addition to the census data, disturbances of the haul-out are recorded. The method for recording disturbances follows those in Mortenson (1996). Disturbances would be recorded on a three-point scale that represents an increasing seal response to the disturbance (Table 3). The time, source, and duration of the disturbance, as well as an estimated distance between the source and haul-out, are recorded. It should be noted that only responses falling into Mortenson's Levels 2 and 3 will be considered as harassment under the MMPA, under the terms of this proposed IHA.

TABLE 3—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation in response to disturbance. This may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals over short distances to hurried retreats many meters in length.
3	Flight	All retreats (flushes) to the water, another group of seals, or over the beach.

Weather conditions are recorded at the beginning of each census. These include temperature, percent cloud cover, and wind speed (Beaufort scale). Tide levels and estuary water surface elevations are correlated to the monitoring start and end times.

In an effort towards understanding possible relationships between use of the Jenner haul-out and nearby coastal and river haul-outs, several other haul-outs on the coast and in the Russian River estuary are monitored as well (see Figure 4 of SCWA's application). The peripheral haul-outs are visited for 10-minute counts twice during each baseline monitoring day. All pinnipeds hauled out were counted from the same vantage point(s) at each haul-out using a high-powered spotting scope or binoculars.

Estuary Management Event Monitoring, Lagoon Outlet Channel—Should the mouth close during the lagoon management period, SCWA would construct a lagoon outlet channel as required by the BiOp. Activities associated with the initial construction of the outlet channel, as well as the maintenance of the channel that may be required, would be monitored for disturbances to the seals at the Jenner haul-out.

A 1-day pre-event channel survey would be made within 1 to 3 days prior to constructing the outlet channel. The haul-out would be monitored on the day the outlet channel is constructed and daily for up to the maximum 2 days allowed for channel excavation activities. Monitoring would also occur on each day that the outlet channel is maintained using heavy equipment for the duration of the lagoon management period. Monitoring of outlet channel construction and maintenance would correspond with that described under the ''Baseline'' section previously, with the exception that management activity monitoring duration is defined by event duration, rather than being set at 8 hours. On the day of the management event, pinniped monitoring begins at least 1 hour prior to the crew and equipment accessing the beach work area and continues through the duration of the event, until at least 1 hour after the crew and equipment leave the beach.

In an attempt to understand whether seals from the Jenner haul-out are displaced to coastal and river haul-outs nearby when management events occur, other nearby haul-outs are monitored concurrently with monitoring of outlet channel construction and maintenance activities. This provides an opportunity to qualitatively assess whether these haul-outs are being used by seals displaced from the Jenner haul-out during lagoon outlet channel excavation and maintenance. This monitoring would not provide definitive results regarding displacement to nearby coastal and river haul-outs, as individual seals are not marked or photo-identified, but is useful in tracking general trends in haul-out use during lagoon outlet channel excavation and maintenance. As volunteers are required to monitor these peripheral haul-outs, haul-out locations may need to be prioritized if there are not enough volunteers available. In that case, priority would be assigned to the nearest haul-outs (North Jenner and Odin Cove), followed by the Russian River estuary haul-outs, and finally the more distant coastal haul-outs.

Estuary Management Event Monitoring, Artificial Breaching Events—In accordance with the Russian River BiOp, SCWA may artificially breach the barrier beach outside of the summer lagoon management period, and may conduct a maximum of two such breachings during the lagoon management period, when estuary water surface elevations rise above seven feet. In that case, NMFS may be consulted regarding potential scheduling of an artificial breaching event to open the barrier beach and reduce flooding risk.

Pinniped response to artificial breaching will be monitored at each such event during the term of the IHA. Methods would follow the census and disturbance monitoring protocols described in the ''Baseline'' section, which were also used for the 1996 to 2000 monitoring events (MSC, 1997, 1998, 1999, 2000; SCWA and MSC, 2001). The exception, as for lagoon management events, is that duration of monitoring is dependent upon duration of the event. On the day of the management event, pinniped monitoring begins at least 1 hour prior to the crew and equipment accessing the beach work area and continues through the duration of the event, until at least 1 hour after the crew and equipment leave the beach.

For all counts, the following information would be recorded in 30-minute intervals: (1) Pinniped counts, by species; (2) behavior; (3) time, source and duration of any disturbance; (4) estimated distances between source of disturbance and pinnipeds; (5) weather conditions (e.g., temperature, wind); and (5) tide levels and estuary water surface elevation.

Monitoring During Pupping Season—The pupping season is defined as March 15 to June 30. Baseline, lagoon outlet channel, and artificial breaching monitoring during the pupping season will include records of neonate (pups less than 1 week old) observations. Characteristics of a neonate pup include: body weight less than 15 kg; thin for their body length; an umbilicus or natal pelage present; wrinkled skin; and awkward or jerky movements on land. SCWA will coordinate with the Seal Watch monitoring program to

determine if pups less than 1 week old are on the beach prior to a water level management event.

If, during monitoring, observers sight any pup that might be abandoned, SCWA would contact the NMFS stranding response network immediately and also report the incident to NMFS' West Coast Regional Office and Office of Protected Resources within 48 hours. Observers will not approach or move the pup. Potential indications that a pup may be abandoned are no observed contact with adult seals, no movement of the pup, and the pup's attempts to nurse are rebuffed.

Staffing—Monitoring is conducted by qualified individuals, which may include professional biologists employed by NMFS or SCWA or volunteers trained by the Stewards' Seal Watch program (Stewards). All volunteer monitors are required to attend classroom-style training and field site visits to the haul-outs. Training covers the MMPA and conditions of the IHA, SCWA's pinniped monitoring protocols, pinniped species identification, age class identification (including a specific discussion regarding neonates), recording of count and disturbance observations (including completion of datasheets), and use of equipment. Pinniped identification includes the harbor seal, California sea lion, and northern elephant seal, as well as other pinniped species with potential to occur in the area. Generally, SCWA staff and volunteers collect baseline data on Jenner haul-out use during the twice-monthly monitoring events. A schedule for this monitoring would be established with Stewards once volunteers are available for the monitoring effort. SCWA staff monitors lagoon outlet channel excavation and maintenance activities and artificial breaching events at the Jenner haul-out, with assistance from Stewards volunteers as available. Stewards volunteers monitor the coastal and river haul-out locations during lagoon outlet channel excavation and maintenance activities.

Training on the MMPA, pinniped identification, and the conditions of the IHA is held for staff and contractors assigned to estuary management activities. The training includes equipment operators, safety crew members, and surveyors. In addition, prior to beginning each water surface elevation management event, the biologist monitoring the event participates in the onsite safety meeting to discuss the location(s) of pinnipeds at the Jenner haul-out that day and methods of avoiding and minimizing disturbances to the haul-out as outlined in the IHA.

Reporting

SCWA is required to submit a report on all activities and marine mammal monitoring results to the Office of Protected Resources, NMFS, and the West Coast Regional Administrator, NMFS, 90 days prior to the expiration of the IHA if a renewal is sought, or within 90 days of the expiration of the IHA otherwise. This annual report will also be distributed to California State Parks and Stewards, and would be available to the public on SCWA's Web site. This report will contain the following information:

- The number of pinnipeds taken, by species and age class (if possible);
- Behavior prior to and during water level management events;
- Start and end time of activity;
- Estimated distances between source and pinnipeds when disturbance occurs;
- Weather conditions (e.g., temperature, wind, etc.);
- Haul-out reoccupation time of any pinnipeds based on post-activity monitoring;
- Tide levels and estuary water surface elevation; and
- Pinniped census from bi-monthly and nearby haul-out monitoring.

The annual report includes descriptions of monitoring methodology, tabulation of estuary management events, summary of monitoring results, and discussion of problems noted and proposed remedial measures.

Summary of Previous Monitoring

SCWA complied with the mitigation and monitoring required under all previous authorizations. In accordance with the 2013 IHA, SCWA submitted a Report of Activities and Monitoring Results, covering the period of January 1 through December 31, 2013. Previous monitoring reports (available at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*) provided additional analysis of monitoring results from 2009–12. A barrier beach was formed eleven times during 2013, but SCWA was required to implement artificial breaching for only five of these closure events (note that the fifth such event occurred on January 2, 2014, following bar closure on December 24, 2013, and is not discussed in SCWA's current 2013 monitoring report). The Russian River outlet was closed to the ocean for a total of 104 days in 2013, including extended closures totaling 56 days during the lagoon management period. However, these closures all culminated in natural breaches and no outlet channel management events were required. In January 2012, the barrier beach was artificially breached after two days of breaching activity. There were also several periods over the course of the year where the barrier beach closed or became naturally perched and then subsequently breached naturally (SCWA, 2013). In 2011, no water level management activities occurred (SCWA, 2012). In 2010, one lagoon management event and two artificial breaching events occurred (SCWA, 2011). Pinniped monitoring occurred no more than 3 days before, the day of, and the day after each water level management activity. In addition, SCWA conducted biological and physical monitoring as described previously. During the course of these activities, SCWA did not exceed the take levels authorized under the relevant IHAs.

Baseline Monitoring

Baseline monitoring was performed to gather additional information about the population of harbor seals utilizing the Jenner haul-out including population trends, patterns in seasonal abundance and the influence of barrier beach condition on harbor seal abundance. The effect of tide cycle and time of day on the abundance of seals at the Jenner haul-out was explored in detail in a previous report (SCWA, 2012); data collected in 2013 did not change the interpretation of these findings. Baseline monitoring at the mouth of the Russian River was conducted concurrently with monitoring of the peripheral haul-outs, and was scheduled for 2 days out of each month with the intention of capturing a low and high tide each in the morning and afternoon. A total of 22 baseline surveys were conducted in 2013. Figure 3 of SCWA's 2013 report shows the mean number of harbor seals during twice-monthly baseline monitoring events from 2009–13.

Peak seal abundance, as determined by the single greatest count of harbor seals at the Jenner haul-out, was on July 11 (476 seals), and overall mean seal abundance at Jenner was greatest in July (mean = 411 ± 7.6 s.e.). This is greater than any previously reported monthly averages by more than 100 seals (Figure 3 of SCWA's report). However, this peak in abundance during the summer molting period is typical of past years' observations. Also similar to previous years, seal abundance declined in the fall.

No distressed or abandoned pups were reported in 2013. Pup production at the Jenner haul-out was 28.8 percent of total seals as calculated from the peak pup count recorded on April 26 and the

number of adult harbor seals present at the same time. This level of production is more typical of past years as compared to 2012, where 13.8 percent of seals were pups at the time of the peak pup count. The average of pups observed (when pups were present) during April and May have been similar between years, ranging from 12.9–15.4 for 2011–13. Comparison of count data between the Jenner and peripheral haul-outs did not show any obvious correlations (e.g., the number of seals occupying peripheral haul-outs compared to the Jenner haul-out did not necessarily increase or decrease as a result of disturbance caused by beach visitors). Please review SCWA's report for a more detailed discussion.

Water Level Management Activity Monitoring

Eight pre-breaching, four each breaching and post-breaching, and two pre-lagoon outlet surveys were conducted in 2013. As mentioned previously and evidenced by this survey activity, only four artificial breaching events and no outlet channel events actually occurred (natural breaches occurred prior to water level management activity in other cases). Artificial breaching events occurred on February 21, October 15, November 7, and December 5. No injuries or mortalities were observed during 2013, and harbor seal reactions ranged from merely alerting to crew presence to flushing from the beach. No California sea lions or northern elephant seals were observed during water level management activities or during biological and physical monitoring of the beach and estuary.

Total observed incidences of marine mammal take, by Level B harassment only, from water level management activity and biological and physical monitoring, was 1,351 harbor seals (detailed in Table 4). No California sea lions or northern elephant seals were observed during water level management activities or during biological and physical monitoring of the beach and estuary. While the observed take was significantly lower than the level authorized, it is possible that incidental take in future years could approach the level authorized. Actual take is dependent largely upon the number of water level management events that occur, which is unpredictable. Take of species other than harbor seals depends upon whether those species, which do not consistently utilize the Jenner haul-out, are present. The authorized take, though much higher than the actual take, was justified based on conservative estimated scenarios for animal presence and necessity of water level management. No significant departure from the method of estimation is used for the proposed IHA (see ''Estimated Take by Incidental Harassment'') for the same activities in 2014.

TABLE 4—OBSERVED INCIDENTAL HARASSMENT (LEVEL B HARASSMENT ONLY) OF HARBOR SEALS DURING RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES, 2013

Date	Event type	Observed take	
		Age class [a]	Number
Feb 21	Artificial breaching	Adult	22
May 15	Water quality sampling	Adult	1
May 30	Beach topographic survey	Adult, pup	80 + 2
Jun 13	Beach topographic survey	Adult	156
Jul 16	Beach topographic survey	Adult	295
Aug 8	Beach topographic survey	Adult	107
Sep 5	Beach topographic survey	Adult	40
Oct 15	Artificial breaching	Adult	45
Nov 7	Artificial breaching	Adult	64
Nov 12	Beach topographic survey	Adult	325
Nov 13	Water quality sampling	Adult	10
Dec 4	Pre-breaching survey	Adult	25
Dec 5	Artificial breaching	Adult	61
Dec 12	Beach topographic survey	Adult	118
Total			1,351

[a] Pups are counted separately through June, after which all seals are counted as adults as it becomes more difficult to accurately age individuals.

It should be noted that one of the primary reasons for the increase in observed incidences of incidental take in 2013 (1,351) compared with prior years (208 in 2012, 42 in 2011, 290 in 2010) was a change in protocol for the beach topographic surveys (although realized level of activity would be expected to remain a primary determinant in future years). Due to the frequent and prolonged river mouth closures in 2013—including closures of 25 days in June/July and 21 days in September/October—there was an increased need to gather complete information about the topography and sand elevation of the beach to best inform water level management activities. This necessitated the survey crew to access the entire beach, including any area where seals were hauled out. Therefore, beginning on May 30, 2013, the methods for conducting the monthly topographic surveys of the barrier beach were changed. Previously, monitors at a distance would inform survey crews via radio if harbor seals became alert to their presence. Survey crews would then retreat or avoid certain areas as necessary to avoid behavioral harassment of the seals. According to the revised protocol, and provided that no neonates or nursing pups were on the haul-out, the survey crew would continue their approach. The survey crews would proceed in a manner that allowed for the seals to gradually vacate the beach before the survey proceeded, thereby reducing the intensity of behavioral reactions as much as possible, but the numbers of incidences of behavioral harassment nevertheless increased. SCWA expects that this revised protocol would remain in place for the coming year.

SCWA continued to investigate the relative disturbance caused by their activities versus that caused by other sources (see Figure 6 of SCWA's monitoring report as well as SCWA,

2013). The data recorded during 2013 do not differ from the findings reported in SCWA (2013). Harbor seals are most frequently disturbed by people on foot, with an increase in frequency of people present during bar-closed conditions (see Figure 5 of SCWA's monitoring report). Kayakers are the next most frequent source of disturbance overall, also with an increase during bar-closed conditions. For any disturbance event it is often only a fraction of the total haul-out that responds. Some sources of disturbance, though rare, have a larger disturbing effect when they occur. For example, disturbances from dogs occur less frequently, but these incidents often disturb over half of the seals hauled out.

Conclusions

The following section provides a summary of information available in SCWA's monitoring report. The primary purpose of SCWA's Pinniped monitoring plan is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. However, as described previously, the questions listed below are also of specific interest. The limited data available thus far precludes drawing definitive conclusions regarding the key questions in SCWA's monitoring plan, but we discuss preliminary conclusions and available evidence below.

1. Under what conditions do pinnipeds haul out at the Russian River estuary mouth at Jenner?

A summary of baseline pinniped monitoring provided in SCWA (2012) concluded that time of year, tidal state, and time of day all influenced harbor seal abundance at the Jenner haul-out. Baseline data collected from 2009–13 indicate that the highest numbers of pinnipeds are observed at the Jenner haul-out in July (during the molting season; see Figure 3 of SCWA's monitoring report), as would be expected on the basis of harbor seal biological and physiological requirements (Herder, 1986; Allen *et al.,* 1989; Stewart and Yochem, 1994; Hanan, 1996; Gemmer, 2002). Although multiple factors likely influence harbor seal presence at the haul-out, SCWA believes that barrier beach condition (i.e., open or closed) may be significant. Daily average abundance of seals was lower during bar-closed conditions compared to bar-open conditions. This effect is likely due to a combination of factors, including increased human disturbance, reduced access to the ocean from the estuary side of the barrier beach, and the increased disturbance from wave action when seals utilize the ocean side of the barrier beach. In addition, when the barrier beach is open the river mouth channel provides a natural barrier between visitors accessing Goat Rock State Beach from the main parking area to the south. The increase in disturbances due to kayakers during bar-closed conditions may also be due to the lack of river outflow to the ocean, allowing for kayakers to paddle much closer to the seal haul-out.

Overall, seals appear to utilize the Jenner haul-out throughout the tidal cycle. Seal abundance is significantly lower during the highest of tides when the haul-out is subject to an increase in wave overwash. Time of day had some effect on seal abundance at the Jenner haul-out, as abundance was greater in the afternoon hours compared to the morning hours. More analysis exploring the relationship of ambient temperature, incidence of disturbance, and season on time of day effects would help to explain why these variations in seal abundance occur. It is likely that a combination of multiple factors (e.g., season, tides, wave heights, level of beach disturbance) influence when the haul-out is most utilized.

2. How do seals at the Jenner haul-out respond to activities associated with the construction and maintenance of the lagoon outlet channel and artificial breaching activities?

SCWA has, thus far, implemented the lagoon outlet channel only one time (July 8, 2010). The response of harbor seals at the Jenner haul-out to the outlet channel implementation activities was similar to responses observed during past artificial breaching events (MSC, 1997, 1998, 1999, 2000; SCWA and MSC, 2001). The harbor seals typically alert to the sound of equipment on the beach and leave the haul-out as the crew and equipment approach. Individuals then haul out on the beach while equipment is operating, leaving the beach again when equipment and staff depart, and typically begin to return to the haul-out within 30 minutes of the work ending. Because the barrier beach reformed soon after outlet channel implementation and subsequently breached on its own following the 2010 event, maintenance of the outlet channel was not necessary and monitoring of the continued response of pinnipeds at the Jenner haul-out to maintenance of the outlet channel and management of the lagoon for the duration of the lagoon management period has not yet been possible. As noted previously, when breaching activities were conducted south of the haul-out location seals often remained on the beach during all or some of the breaching activity. This indicates that seals are less disturbed by activities when equipment and crew do not pass directly past their haul-out.

3. Does the number of seals at the Jenner haul-out significantly differ from historic averages with formation of a summer lagoon in the Russian River estuary?

The duration of closures in recent years has not generally been dissimilar from the duration of closures that have been previously observed at the estuary, and lagoon outlet channel implementation has occurred only once, meaning that there has been a lack of opportunity to study harbor seal response to extended lagoon conditions. A barrier beach has formed during the lagoon management period twelve times since SCWA began implementing the lagoon outlet channel adaptive management plan, with an average duration of nine days. However, the additional sustained river outlet closures observed in 2013 during the lagoon management period (maximum 25 days) provide some information regarding the abundance of seals during the formation of a summer lagoon. While seal abundance was lower overall during bar-closed conditions, there was also a record high in seal abundance recorded (both daily and monthly). These observations may indicate that, while seal abundance exhibits a short-term decline following bar closure, the number of seals utilizing the Jenner haul-out overall during such conditions is not affected. Coupling seal abundance data with human abundance data and disturbance observations leads SCWA to conclude that the increased frequency of disturbances during bar-closed conditions is the underlying cause for the short-term decline in seal abundance. Short-term fluctuations in abundance aside, it appears that the general trends of increased abundance during summer and decreased abundance during fall, which coincide with the annual molt and likely foraging dispersal, respectively, are not affected.

4. Are seals at the Jenner haul-out displaced to nearby river and coastal haul-outs when the mouth remains closed in the summer?

Initial comparisons of peripheral (river and coastal) haul-out count data to the Jenner haul-out counts have been inconclusive (see Table 4 and Figure 7 of SCWA's monitoring report), and further information from estuary management activities is needed. Given the inconclusive nature of data recorded thus far, it would be useful to be able to track the movements of individual seals. Therefore, SCWA has begun a pilot photo-identification study as a means to observe individual seals over time. SCWA has determined that

current observation locations allow capture of the detailed images of seals necessary to identify individuals based on spot patterns, and will continue this pilot over the coming year by evaluating photographs for matches.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: ''. . . any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.'' The former is termed Level A harassment and the latter is termed Level B harassment.

SCWA has requested, and NMFS proposes, authorization to take harbor seals, California sea lions, and northern elephant seals, by Level B harassment only, incidental to estuary management activities. These activities, involving increased human presence and the use of heavy equipment and support vehicles, are expected to harass pinnipeds present at the haul-out through disturbance only. In addition, monitoring activities prescribed in the BiOp may harass additional animals at the Jenner haul-out and at the three haul-outs located in the estuary (Penny Logs, Patty's Rock, and Chalanchawi). Estimates of the number of harbor seals, California sea lions, and northern elephant seals that may be harassed by the proposed activities is based upon the number of potential events associated with Russian River estuary management activities and the average number of individuals of each species that are present during conditions appropriate to the activity. As described previously in this document, monitoring effort at the mouth of the Russian River has shown that the number of seals utilizing the haul-out declines during bar-closed conditions. Tables 5 and 6 detail the total number of estimated takes.

Events associated with lagoon outlet channel management would occur only during the lagoon management period, and are split into two categories: (1) Initial channel implementation, which would likely occur between May and September, and (2) maintenance and monitoring of the outlet channel, which would continue until October 15. In addition, it is possible that the initial outlet channel could close through natural processes, requiring additional channel implementation events. Based on past experience, SCWA estimates that a maximum of three outlet channel implementation events could be required. Outlet channel implementation events would only occur when the bar is closed; therefore, it is appropriate to use data from bar-closed monitoring events in estimating take (Table 2). Construction of the outlet channel is designed to produce a perched outflow, resulting in conditions that more closely resemble bar-closed than bar-open with regard to pinniped haul-out usage. As such, bar-closed data is appropriate for estimating take during all lagoon management period maintenance and monitoring activity. As dates of outlet channel implementation cannot be known in advance, the highest daily average of seals per month—the July average for 2009–13—is used in estimating take. For maintenance and monitoring activities associated with the lagoon outlet channel, which would occur on a weekly basis following implementation of the outlet channel, the average number of harbor seals for each month was used.

Artificial breaching activities would also occur during bar-closed conditions. Data collected specifically during bar-closed conditions may be used for estimating take associated with artificial breaching (Table 2). The number of estimated artificial breaching events is also informed by experience, and is equal to the annual average number of bar closures recorded for a given month from 1996–2013.

Previously, for monthly topographic surveys on the barrier beach, SCWA estimated that only 10 percent of seals hauled out would be likely to be disturbed by this activity, which involves two people walking along the barrier beach with a survey rod. During those surveys a pinniped monitor was positioned at the Highway 1 overlook and would notify the surveyors via radio when any seals on the haul-out begin to alert to their presence. This enabled the surveyors to retreat slowly away from the haul-out, typically resulting in no disturbance. However, protocol for this monitoring activity has been changed (i.e., surveyors will continue cautiously rather than retreat when seals alert—this is necessary to collect required data) and the resulting incidences of take are now estimated as 100 percent of the seals expected to be encountered. The exception to this change is during the pupping season, when surveyors would continue to avoid seals to reduce harassment of pups and/or mothers with neonates. For the months of March–May, the assumption that only 10 percent of seals present would be harassed is retained. The number of seals expected to be encountered is based on the average monthly number of seals hauled out as recorded during baseline surveys conducted by SCWA in 2011–13 (Table 1).

For electromagnetic imaging profiles associated with the jetty study, the estimate of take was calculated similar to that of the topographic surveys described above. The field work for these profiles will be conducted in a similar manner to the topographic surveys with a monitor present. In addition, these imaging profiles will be conducted outside of the harbor seal pupping season, in an effort to reduce disturbance to nursing females and young pups. As noted previously, SCWA believes that, due to the nature of the activity and mitigation measures to be implemented, other components of the jetty study are unlikely to result in incidental take.

For biological and physical habitat monitoring activities in the estuary, it was assumed that pinnipeds may be encountered once per event and flush from a river haul-out. The potential for harassment associated with these events is limited to the three haul-outs located in the estuary. In past experience, SCWA typically sees no more than a single harbor seal at these haul-outs, which consist of scattered logs and rocks that often submerge at high tide.

TABLE 5—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Number of animals expected to occur [a]	Number of events [b c]	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)		
Implementation: 104.[d] Maintenance and Monitoring: May: 53. June: 102. July: 104. Aug: 17. Sept: 17. Oct: 25.	Implementation: 3. Maintenance: May: 1. June–Sept: 4/month. Oct: 1. Monitoring: June–Sept: 2/month. Oct: 1.	Implementation: 312. Maintenance: 1,038. Monitoring: 505. Total: 1,855.
Artificial Breaching		
Oct: 25. Nov: 53. Dec: 34. Jan: 32. Feb: 134. Mar: 224. Apr: 80. May: 53.	Oct: 2. Nov: 2. Dec: 2. Jan: 1. Feb: 1. Mar: 1. Apr: 1. May: 1. 11 events maximum.	Oct: 50. Nov: 106. Dec: 68. Jan: 32. Feb: 134. Mar: 224. Apr: 80. May: 53. Total: 747.
Topographic and Geophysical Beach Surveys		
Jan: 95. Feb: 88. Mar: 145. Apr: 135. May: 151. Jun: 151. Jul: 243. Aug: 137. Sep: 67. Oct: 61. Nov: 94. Dec: 64.	1 topographic survey/month; 100 percent of animals present Jun–Feb; 10 percent of animals present Mar–May. 2 geophysical surveys/month, Sep–Dec; 1/month, Jul–Aug, Jan–Feb; 10 percent of animals present.	Jan: 95 + 10. Feb: 88 + 9. Mar: 15. Apr: 14. May: 15. Jun: 151. Jul: 243 + 24. Aug: 137 + 14. Sep: 67 + 13. Oct: 61 + 12. Nov: 94 + 19. Dec: 64 + 13. Total: 1,044 + 114 = 1,158.
Biological and Physical Habitat Monitoring in the Estuary		
1.[e]	121.	121.
Total		3,881.

[a] For Lagoon Outlet Channel Management and Artificial Breaching, average daily number of animals corresponds with data from Table 2. For Topographic and Geophysical Beach Surveys, average daily number of animals corresponds with 2011–13 data from Table 1.

[b] For implementation of the lagoon outlet channel, an event is defined as a single, two-day episode. It is assumed that the same individual seals would be hauled out during a single event. For the remaining activities, an event is defined as a single day on which an activity occurs. Some events may include multiple activities.

[c] Number of events for artificial breaching derived from historical data. The average number of events for each month was rounded up to the nearest whole number; estimated number of events for December was increased from one to two because multiple closures resulting from storm events have occurred in recent years during that month. These numbers likely represent an overestimate, as the average annual number of events is six.

[d] Although implementation could occur at any time during the lagoon management period, the highest daily average per month from the lagoon management period was used.

[e] Based on past experience, SCWA expects that no more than one seal may be present, and thus have the potential to be disturbed, at each of the three river haul-outs. Number of events includes addition of acoustic telemetry surveys.

TABLE 6—ESTIMATED NUMBER OF CALIFORNIA SEA LION AND ELEPHANT SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

Species	Number of animals expected to occur [a]	Number of events [a]	Potential total number of individual animals that may be taken
Lagoon Outlet Channel Management (May 15 to October 15)			
California sea lion (potential to encounter once per event)	1	6	6
Northern elephant seal (potential to encounter once per event)	1	6	6
Artificial Breaching			
California sea lion (potential to encounter once per month, Oct–May)	1	8	8
Northern elephant seal (potential to encounter once per month, Oct–May)	1	8	8
Topographic and Geophysical Beach Surveys			
California sea lion (potential to encounter once per month year-round for topographical surveys; potential to encounter once per month Jul–Feb for geophysical surveys)	1	20	20
Northern elephant seal (potential to encounter once per month year-round for topographical surveys; potential to encounter once per month Jul–Feb for geophysical surveys)	1	20	20
Biological and Physical Habitat Monitoring in the Estuary			
California sea lion (potential to encounter once per month, Jul–Feb)	1	8	8
Northern elephant seal (potential to encounter once per month, Jul–Feb)	1	8	8
Total			
California sea lion			42
Elephant seal			42

[a] SCWA expects that California sea lions and/or northern elephant seals could occur during any month of the year, but that any such occurrence would be infrequent and unlikely to occur more than once per month.

Analyses and Preliminary Determinations

Negligible Impact Analysis

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we consider other factors, such as the likely nature of any responses (e.g., intensity, duration), the context of any responses (e.g., critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

Although SCWA's estuary management activities may disturb pinnipeds hauled out at the mouth of the Russian River, as well as those hauled out at several locations in the estuary during recurring monitoring activities, impacts are occurring to a small, localized group of animals. While these impacts can occur year-round, they occur sporadically and for limited duration (e.g., a maximum of 2 consecutive days for water level management events). Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment on the beach. While disturbance may occur during a sensitive time (during the March 15–June 30 pupping season), mitigation measures have been specifically designed to further minimize harm during this period and eliminate the possibility of pup injury or mother-pup separation.

No injury, serious injury, or mortality is anticipated, nor is the proposed action likely to result in long-term impacts such as permanent abandonment of the haul-out. Injury, serious injury, or mortality to pinnipeds would likely result from startling animals inhabiting the haul-out into a stampede reaction, or from extended mother-pup separation as a result of such a stampede. Long-term impacts to pinniped usage of the haul-out could result from significantly increased presence of humans and equipment on the beach. To avoid these possibilities, we have worked with SCWA to develop the previously described mitigation measures. These are designed to reduce the possibility of startling pinnipeds, by gradually apprising them of the presence of humans and equipment on the beach, and to reduce the possibility of impacts to pups by eliminating or altering management activities on the beach when pups are present and by setting limits on the frequency and duration of events during pupping season. During the past 15 years of flood control management, implementation of similar mitigation measures has resulted in no known stampede events and no known injury, serious injury, or mortality. Over the course of that time period, management events have generally been infrequent and of limited duration.

No pinniped stocks for which incidental take authorization is proposed are listed as threatened or endangered under the ESA or

determined to be strategic or depleted under the MMPA. Recent data suggests that harbor seal populations have reached carrying capacity; populations of California sea lions and northern elephant seals in California are also considered healthy.

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (i.e., less than one day) and limited intensity (i.e., temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor been documented—in the years since appropriate protocols were established (see ''Mitigation'' for more details). Further, the continued, and increasingly heavy (Figure 4; SCWA, 2014), use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we preliminarily find that the total marine mammal take from SCWA's estuary management activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

The proposed number of animals taken for each species of pinnipeds can be considered small relative to the population size. There are an estimated 30,196 harbor seals in the California stock, 296,750 California sea lions, and 124,000 northern elephant seals in the California breeding population. Based on extensive monitoring effort specific to the affected haul-out and historical data on the frequency of the specified activity, we are proposing to authorize take, by Level B harassment only, of 3,881 harbor seals, 42 California sea lions, and 42 northern elephant seals, representing 12.9, 0.01, and 0.03 percent of the populations, respectively. However, this represents an overestimate of the number of individuals harassed over the duration of the proposed IHA, because these totals represent much smaller numbers of individuals that may be harassed multiple times. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, we preliminarily find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that a section 7 consultation under the ESA is not required. As described elsewhere in this document, SCWA and the Corps consulted with NMFS under section 7 of the ESA regarding the potential effects of their operations and maintenance activities, including SCWA's estuary management program, on ESA-listed salmonids. As a result of this consultation, NMFS issued the Russian River Biological Opinion (NMFS, 2008), including Reasonable and Prudent Alternatives, which prescribes modifications to SCWA's estuary management activities. The effects of the proposed activities and authorized take would not cause additional effects for which section 7 consultation would be required.

National Environmental Policy Act (NEPA)

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, we prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of the original IHA to SCWA for the specified activities and found that it would not result in any significant impacts to the human environment. We signed a Finding of No Significant Impact (FONSI) on March 30, 2010. We have reviewed SCWA's application for a renewed IHA for ongoing estuary management activities for 2014 and the 2013 monitoring report. Based on that review, we have determined that the proposed action follows closely the IHAs issued and implemented in 2010–13 and does not present any substantial changes, or significant new circumstances or information relevant to environmental concerns which would require a supplement to the 2010 EA or preparation of a new NEPA document. Therefore, we have preliminarily determined that a new or supplemental EA or Environmental Impact Statement is unnecessary, and will, after review of public comments determine whether or not to reaffirm its FONSI. The 2010 EA is available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Proposed Authorization

As a result of these preliminary determinations, we propose to issue an IHA to SCWA for conducting the described estuary management activities in Sonoma County, California, for one year from the date of issuance, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

The Sonoma County Water Agency (SCWA), California, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1371(a)(5)(D)) to harass marine mammals incidental to conducting estuary management activities in the Russian River, Sonoma County, California.

1. This Incidental Harassment Authorization (IHA) is valid from April 21, 2014 through April 20, 2015.

2. This IHA is valid only for activities associated with estuary management activities in the Russian River, Sonoma County, California, including:

(a) Lagoon outlet channel management;

(b) Artificial breaching of barrier beach;

(c) Geophysical surveys and other work associated with a jetty study; and

(d) Physical and biological monitoring of the beach and estuary as required.

3. General Conditions

(a) A copy of this IHA must be in the possession of SCWA, its designees, and work crew personnel operating under the authority of this IHA.

(b) SCWA is hereby authorized to incidentally take, by Level B harassment only, 3,881 harbor seals (*Phoca vitulina richardii*), 42 California sea lions (*Zalophus californianus californianus*), and 42 northern elephant seals (*Mirounga angustirostris*).

(c) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the

modification, suspension, or revocation of this IHA.

(d) If SCWA observes a pup that may be abandoned, it shall contact the National Marine Fisheries Service (NMFS) West Coast Regional Stranding Coordinator immediately (562–980–3230; *Justin.Viezbicke@noaa.gov*) and also report the incident to NMFS Office of Protected Resources (301–427–8425; *Benjamin.Laws@noaa.gov*) within 48 hours. Observers shall not approach or move the pup.

4. Mitigation Measures

In order to ensure the least practicable impact on the species listed in condition 3(b), the holder of this Authorization is required to implement the following mitigation measures:

(a) SCWA crews shall cautiously approach the haul-out ahead of heavy equipment to minimize the potential for sudden flushes, which may result in a stampede—a particular concern during pupping season.

(b) SCWA staff shall avoid walking or driving equipment through the seal haul-out.

(c) Crews on foot shall make an effort to be seen by seals from a distance, if possible, rather than appearing suddenly at the top of the sandbar, again preventing sudden flushes.

(d) During breaching events, all monitoring shall be conducted from the overlook on the bluff along Highway 1 adjacent to the haul-out in order to minimize potential for harassment.

(e) A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

(f) Equipment shall be driven slowly on the beach and care will be taken to minimize the number of shut-downs and start-ups when the equipment is on the beach.

(g) All work shall be completed as efficiently as possible, with the smallest amount of heavy equipment possible, to minimize disturbance of seals at the haul-out.

(h) Boats operating near river haul-outs during monitoring shall be kept within posted speed limits and driven as far from the haul-outs as safely possible to minimize flushing seals.

In addition, SCWA shall implement the following mitigation measures during pupping season (March 15–June 30):

(i) SCWA shall maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.

(j) If a pup less than one week old is on the beach where heavy machinery will be used or on the path used to access the work location, the management action shall be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA shall consult with NMFS and CDFG to determine the appropriate course of action. SCWA shall coordinate with the locally established seal monitoring program (Stewards of the Coast and Redwoods) to determine if pups less than one week old are on the beach prior to a breaching event.

(k) Physical and biological monitoring shall not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

5. Monitoring

The holder of this Authorization is required to conduct baseline monitoring and shall conduct additional monitoring as required during estuary management activities. Monitoring and reporting shall be conducted in accordance with the approved Pinniped Monitoring Plan.

(a) Baseline monitoring shall be conducted twice-monthly for the term of the IHA. These censuses shall begin at dawn and continue for eight hours, weather permitting; the census days shall be chosen to ensure that monitoring encompasses a low and high tide each in the morning and afternoon. All seals hauled out on the beach shall be counted every 30 minutes from the overlook on the bluff along Highway 1 adjacent to the haul-out using high-powered spotting scopes. Observers shall indicate where groups of seals are hauled out on the sandbar and provide a total count for each group. If possible, adults and pups shall be counted separately.

(b) In addition, peripheral haul-outs shall be visited for 10-minute counts twice during each baseline monitoring day.

(c) During estuary management events, monitoring shall occur on all days that activity is occurring using the same protocols as described for baseline monitoring, with the difference that monitoring shall begin at least one hour prior to the crew and equipment accessing the beach work area and continue through the duration of the event, until at least one hour after the crew and equipment leave the beach. In addition, a one-day pre-event survey of the area shall be made within one to three days of the event and a one-day post-event survey shall be made after the event, weather permitting.

(d) Monitoring of peripheral haul-outs shall occur concurrently with event monitoring, when possible.

(e) For all monitoring, the following information shall be recorded in 30-minute intervals:

i. Pinniped counts by species;

ii. Behavior;

iii. Time, source and duration of any disturbance, with takes incidental to SCWA actions recorded only for responses involving movement away from the disturbance or responses of greater intensity (e.g., not for alerts);

iv. Estimated distances between source of disturbance and pinnipeds;

v. Weather conditions (e.g., temperature, percent cloud cover, and wind speed); and

vi. Tide levels and estuary water surface elevation.

(a) All monitoring during pupping season shall include records of any neonate pup observations. SCWA shall coordinate with the Stewards' monitoring program to determine if pups less than one week old are on the beach prior to a water level management event.

6. Reporting

The holder of this Authorization is required to:

(a) Submit a report on all activities and marine mammal monitoring results to the Office of Protected Resources, NMFS, and the West Coast Regional Administrator, NMFS, 90 days prior to the expiration of the IHA if a renewal is sought, or within 90 days of the expiration of the permit otherwise. This report must contain the following information:

i. The number of seals taken, by species and age class (if possible);

ii. Behavior prior to and during water level management events;

iii. Start and end time of activity;

iv. Estimated distances between source and seals when disturbance occurs;

v. Weather conditions (e.g., temperature, wind, etc.);

vi. Haul-out reoccupation time of any seals based on post-activity monitoring;

vii. Tide levels and estuary water surface elevation;

viii. Seal census from bi-monthly and nearby haul-out monitoring; and

ix. Specific conclusions that may be drawn from the data in relation to the four questions of interest in SCWA's Pinniped Monitoring Plan, if possible.

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take

of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, SCWA shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

A. Time and date of the incident;

B. Description of the incident;

C. Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);

D. Description of all marine mammal observations in the 24 hours preceding the incident;

E. Species identification or description of the animal(s) involved;

F. Fate of the animal(s); and

G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with SCWA to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SCWA may not resume their activities until notified by NMFS.

i. In the event that SCWA discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (e.g., in less than a moderate state of decomposition), SCWA shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with SCWA to determine whether additional mitigation measures or modifications to the activities are appropriate.

ii. In the event that SCWA discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), SCWA shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. SCWA shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

iii. Pursuant to sections 6(b)(ii–iii), SCWA may use discretion in determining what injuries (i.e., nature and severity) are appropriate for reporting. At minimum, SCWA must report those injuries considered to be serious (i.e., will likely result in death) or that are likely caused by human interaction (e.g., entanglement, gunshot). Also pursuant to sections 6(b)(ii–iii), SCWA may use discretion in determining the appropriate vantage point for obtaining photographs of injured/dead marine mammals.

7. Validity of this Authorization is contingent upon compliance with all applicable statutes and permits, including NMFS' 2008 Biological Opinion for water management in the Russian River watershed. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if the authorized taking is having a more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analysis, the draft authorization, and any other aspect of this Notice of Proposed IHA for SCWA's estuary management activities. Please include with your comments any supporting data or literature citations to help inform our final decision on SCWA's request for an MMPA authorization.

Dated: February 28, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–04863 Filed 3–4–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Substantive Submissions Made During Prosecution of the Trademark Application

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 5, 2014.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–0054 comment'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Catherine Cain, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313–1451, by telephone at 571–272–8946, or by email to *Catherine.Cain@uspto.gov.* Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) administers the Trademark Act, 15 U.S.C. 1051 *et seq.,* which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their mark with the USPTO.

Such individuals and businesses may also submit various communications to the USPTO, including providing additional information needed to process a request to delete a particular filing basis from an application or to divide an application identifying multiple goods and/or services into two or more separate applications. Applicants may seek a six-month extension of time to file a statement that the mark is in use in commerce or submit a petition to revive an application that abandoned for failure to submit a timely response to an office action or a timely statement of use or extension request. In some circumstances, an applicant may expressly abandon an application by filing a written request for withdrawal of the application.

The rules implementing the Act are set forth in 37 CFR Part 2. These rules mandate that each register entry include the mark, the goods and/or services in connection with which the mark is

used, ownership information, dates of use, and certain other information. The USPTO also provides similar information concerning pending applications. The register and pending application information may be accessed by an individual or by businesses to determine the availability of a mark. By accessing the USPTO's information, parties may reduce the possibility of initiating use of a mark previously adopted by another. The Federal trademark registration process may thereby lessen the filing of papers in court and between parties.

II. Method of Collection

The forms in this collection are available in electronic format through the Trademark Electronic Application System (TEAS), which may be accessed on the USPTO Web site. TEAS Global Forms are available for the items where a TEAS form with dedicated data fields is not yet available. Applicants may also submit the information in paper form by mail, fax, or hand delivery.

III. Data

OMB Number: 0651–0054.

Form Number(s): PTO Forms 1553, 1581, 2194, 2195, 2200, and 2202.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Estimated Number of Respondents: 292,706 per year.

Estimated Time per Response: The USPTO estimates that it will take the public from 5 minutes (0.08 hours) to 30 minutes (0.50 hours), depending on the complexity of the situation, to gather the necessary information, prepare the appropriate documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 64,305.

Estimated Total Annual Respondent Cost Burden: $25,014,645. The USPTO expects that the information in this collection will be prepared by attorneys at an estimated rate of $389 per hour. Therefore, the USPTO estimates that the respondent cost burden for this collection will be approximately $25,014,645 per year.

Item No.	Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
1	Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use) (Paper).	25	1,704	716
1	Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use) (TEAS).	20	80,733	26,642
2	Request for Extension of Time to File a Statement of Use (Paper)	12	1,819	364
2	Request for Extension of Time to File a Statement of Use (TEAS)	10	180,047	30,608
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (Paper).	20	348	115
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (TEAS).	15	18,548	4,637
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (Paper).	15	34	9
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (TEAS).	12	159	32
5	Request to Delete Section 1(b) Basis, Intent to Use (Paper)	10	26	4
5	Request to Delete Section 1(b) Basis, Intent to Use (TEAS)	5	1,300	104
6	Request for Express Abandonment (Withdrawal) of Application (Paper)	10	100	17
6	Request for Express Abandonment (Withdrawal) of Application (TEAS)	5	4,900	392
7	Request to Divide Application (Paper)	15	39	10
7	Request to Divide Application (TEAS Global)	10	1,922	327
8	Response to Intent-to-Use (ITU) Divisional Unit Office Action (Paper)	30	1	1
8	Response to Intent-to-Use (ITU) Divisional Unit Office Action (TEAS Global).	30	1	1
9	Response to Petition to Revive Deficiency Letter (Paper)	20	5	2
9	Response to Petition to Revive Deficiency Letter (TEAS Global)	15	250	63
10	Petition to the Director Under Trademark Rule 2.146 (Paper)	25	12	5
10	Petition to the Director Under Trademark Rule 2.146 (TEAS Global)	20	600	198
11	Due Diligence Petition Under Trademark Rule 2.66 (Paper)	25	2	1
11	Due Diligence Petition Under Trademark Rule 2.66 (TEAS Global)	20	130	43
12	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services After NOA (Paper).	30	1	1
12	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services After NOA (TEAS Global).	30	25	13
Totals			292,706	64,305

Estimated Total Annual (Non-Hour) Respondent Cost Burden: $28,705,256. There are no capital start-up, maintenance or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) cost burden in the form of postage costs and filing fees.

Applicants incur postage costs when submitting non-electronic information to the USPTO by mail through the United States Postal Service. The USPTO estimates that the majority of the paper forms are submitted to the USPTO via first-class mail at a rate of 49 cents per ounce. Therefore, the USPTO estimates that the postage costs for the paper submissions in this collection will be $2,006.

Item No.	Item	Responses (yr) (a)	Postage costs (b)	Total cost (yr) (a × b)
1	Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use).	1,704	$0.49	$835.00
2	Request for Extension of Time to File a Statement of Use	1,819	0.49	891.00
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action.	348	0.49	171.00
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request.	34	0.49	17.00
5	Request to Delete Section 1(b) Basis, Intent to Use	26	0.49	13.00
6	Request for Express Abandonment (Withdrawal of Application)	100	0.49	49.00
7	Request to Divide Application	39	0.49	19.00
8	Response to Intent-to-Use (ITU) Divisional Unit Office Action	1	0.49	1.00
9	Response to Petition to Revive Deficiency Letter	5	0.49	2.00
10	Petition to the Director Under Trademark Rule 2.146	12	0.49	6.00
11	Due Diligence Petition Under Trademark Rule 2.66	2	0.49	1.00
12	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services After NOA.	1	0.49	1.00
	Totals	4,091		2,006.00

Filing fees are based on per class filing of goods and services; therefore, the total filing fees can vary depending on the number of classes. The total filing fees of $28,703,250 shown here are the minimum fees associated with this information collection.

Item No.	Item	Responses (yr) (a)	Filing fees (b)	Total cost (yr) (a × b)
1	Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use) (Paper).	1,704	$100.00	$170,400.00
2	Trademark/Service Mark Allegation of Use (Statement of Use/Amendment to Allege Use) (TEAS).	80,733	100.00	8,073,300.00
2	Request for Extension of Time to File a Statement of Use (Paper).	1,819	150.00	272,850.00
2	Request for Extension of Time to File a Statement of Use (TEAS).	180,047	150.00	18,004,700.00
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (Paper).	348	100.00	34,800.00
3	Petition to Revive Abandoned Application—Failure to Respond Timely to Office Action (TEAS).	18,548	100.00	1,854,800.00
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (Paper).	34	100.00	3,400.00
4	Petition to Revive Abandoned Application—Failure to File Timely Statement of Use or Extension Request (TEAS).	159	100.00	15,900.00
5	Request to Delete Section 1(b) Basis, Intent to Use (Paper)	26	0.00	0.00
5	Request to Delete Section 1(b) Basis, Intent to Use (TEAS)	1,300	0.00	0.00
6	Request for Express Abandonment (Withdrawal) of Application (Paper).	100	0.00	0.00
6	Request for Express Abandonment (Withdrawal) of Application (TEAS).	4,900	0.00	0.00
7	Request to Divide Application (Paper)	39	100.00	3,900.00
7	Request to Divide Application (TEAS Global)	1,922	100.00	192,200.00
8	Response to Intent-to-Use (ITU) Divisional Unit Office Action (Paper).	1	0.00	0.00
8	Response to Intent-to-Use (ITU) Divisional Unit Office Action (TEAS Global).	1	0.00	0.00
9	Response to Petition to Revive Deficiency Letter (Paper)	5	0.00	0.00
9	Response to Petition to Revive Deficiency Letter (TEAS Global)	250	0.00	0.00
10	Petition to the Director Under Trademark Rule 2.146 (Paper)	12	100.00	1,200.00
10	Petition to the Director Under Trademark Rule 2.146 (TEAS Global).	600	100.00	60,000.00
11	Due Diligence Petition Under Trademark Rule 2.66 (Paper)	2	100.00	200.00
11	Due Diligence Petition Under Trademark Rule 2.66 (TEAS Global).	130	100.00	13,000.00
12	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services After NOA (Paper).	1	100.00	100.00

Item No.	Item	Responses (yr) (a)	Filing fees (b)	Total cost (yr) (a × b)
12	Petition to Revive with Request to Delete Section 1(b) Basis or to Delete ITU Goods/Services After NOA (TEAS Global).	25	100.00	2,500.00
Totals		292,706		28,703,250.00

* **Note:** All filing fees are based on per class filing.

IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to: (a) Evaluate 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) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: February 28, 2014.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2014–04814 Filed 3–4–14; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed renewal of the following proposed Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA) (*44 U.S.C. 3501* et. seq.). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection,

Copies of the information collection request can be obtained by contacting the office listed in the Addresses section of this Notice or on *www.regulations.gov.*

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 5, 2014.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service; Attention Amy Borgstrom, Room 10508B; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

Comments submitted in response to this notice may be made available to the public through *www.regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, 202–606–6930, or by email at *aborgstrom@cns.gov*.

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

CNCS seeks to continue to use this information collection to seek feedback on the agency's service delivery from grantees and other stakeholders.

Current Action

The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on April 30, 2014.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 3045–0137.

Agency Number: None.

Affected Public: Individuals and Households; Businesses and Organizations; State, Local or Tribal Governments.

Total Respondents: 2,000.

Frequency: Once.

Average Time per Response: Averages 15 minutes.

Estimated Total Burden Hours: 500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection on regulations.gov.

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 Office of Management and Budget control number.

Dated: February 27, 2014.

Mary Hyde,

Acting Director, Research and Evaluation.

[FR Doc. 2014–04894 Filed 3–4–14; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, CNCS is soliciting comments on the following proposed Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Pilot and Test Data'' for approval under the Paperwork Reduction Act (PRA) (*44 U.S.C. 3501* et. seq.). This collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

Copies of the information collection request can be obtained by contacting the office listed in the Addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 5, 2014.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service; Attention Amy Borgstrom, Room 10508B; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

Comments submitted in response to this notice may be made available to the public through regulations.gov. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, 202–606–6930, or by email at *aborgstrom@cns.gov*.

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

CNCS seeks to use this new generic information collection to conduct focus groups and pilot test planned surveys.

Current Action

This is a new information collection. The information collection activity will enable pilot testing of survey instruments in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By pilot testing we mean information that provides useful insights on how respondents interact with the instrument, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations regarding prospective studies. It will also allow feedback to contribute directly to the improvement of research program management.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering),

the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Generic Clearance for the Testing/Piloting of Survey Instruments.

OMB Number: TBD.

Agency Number: None.

Affected Public: Individuals and Households; Businesses and Organizations; State, Local or Tribal Governments.

Total Respondents: 350.

Frequency: Annual.

Average Time per Response: 7,500 minutes for 50 respondents to respond to test or pilot surveys. 300 minutes for 50 participants to participate in five focus groups. 3,000 minutes for 50 participants to participate in individual interviews.

Estimated Total Burden Hours: 10,800.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection on regulations.gov.

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 Office of Management and Budget control number.

Dated: February 27, 2014.

Mary Hyde,

Acting Director, Research and Evaluation.

[FR Doc. 2014–04899 Filed 3–4–14; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed renewal of the Award Transfer forms: Request to Transfer a Segal Education Award Amount, Accept/Decline Award Transfer Form, Request to Revoke Transfer of Education Award Form, and Rescind Acceptance of Award Transfer Form. These forms enable AmeriCorps members and recipients to meet the legal requirements of the award transfer process. Copies of the information collection request can be obtained by contacting the office listed in the Addresses section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 5, 2014.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov*.

(2) By mail sent to: Corporation for National and Community Service, National Service Trust, Attention: Nahid Jarrett, 8304B, 1201 New York Avenue NW., Washington, DC 20525.

(3) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nahid Jarrett, 202–606–6753, or by email at *njarrett@cns.gov*.

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

AmeriCorps members may offer to transfer all or part of their qualified education awards to certain family members. Provision is made to accept the transfer or not, to rescind acceptance or revoke the transfer. These processes are implemented electronically where possible but paper forms are available if necessary.

Current Action

CNCS seeks to renew the current information. Except to add the categories of stepchild and step grandchild to the list of qualified recipients of the award transfer, only slight formatting and editing changes have been made.

The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current forms until the revised forms are approved by OMB. The current information collection is due to expire on April 30, 2014.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Request to Transfer a Segal Education Award Amount, Accept/Decline Award Transfer Form, Request to Revoke Transfer of Education Award Form, and Rescind Acceptance of Award Transfer Form.

OMB Number: 3045–0136.

Agency Number: None.

Affected Public: AmeriCorps members with eligible education awards and qualified recipients.

Total Respondents: 1420.

Frequency: Annually.

Average Time per Response: Averages 5 minutes.

Estimated Total Burden Hours: 118.33.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 27, 2014.

Maggie Taylor-Coates,

Chief of Trust Operations.

[FR Doc. 2014–04905 Filed 3–4–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0027]

Privacy Act of 1974; System of Records

AGENCY: Defense Contract Audit Agency, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Defense Contract Audit Agency is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The notice is entitled ''RDCAA 152.2, Personnel Security Data Files.''

DATES: Comments will be accepted on or before April 4, 2014. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

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

FOR FURTHER INFORMATION CONTACT: Defense Contract Audit Agency Privacy Management Analyst at (703) 767–1022.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpclo.defense.gov/.*

The Defense Contract Audit Agency proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

RDCAA 152.2

SYSTEM NAME:

Personnel Security Data Files (May 18, 1999, 64 FR 26947).

REASON:

Records are covered by DoD System of Records Notice, DMDC 12 DoD, Joint Personnel Adjudication System (JPAS) (May 3, 2011, 76 FR 24863). Therefore, RDCAA 152.2, Personnel Security Data Files can be deleted.

[FR Doc. 2014–04820 Filed 3–4–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2014–0005]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Air Force is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The notice is entitled ''F033 AF E, Air Force Directory Services.''

DATES: Comments will be accepted on or before April 4, 2014. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal Rulemaking Portal: *http://www.regulations.gov.*

Follow the instructions for submitting comments.

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from

members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571) 256–2515.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or *http://dpclo.defense.gov/.* The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 28, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

F033 AF E

SYSTEM NAME:

Air Force Directory Services (April 6, 2009, 74 FR 15464)

REASON:

This system does not maintain individual records, the Defense Management Data Center (DMDC) concurs; therefore this system notice can be deleted.

[FR Doc. 2014–04845 Filed 3–4–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0029]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; State Charter School Facilities Incentive Grants Program (1894–0001)

AGENCY: Office of Innovation and Improvement (OII), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before April 4, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0029 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kristin Lundholm, 202–205–4352.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: State Charter School Facilities Incentive Grants Program (1894–0001).

OMB Control Number: 1855–0012.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 12.

Total Estimated Number of Annual Burden Hours: 480.

Abstract: This is an application for grants under the State Charter School Facilities Incentive Grants Program. These grants are made to States to provide them with an incentive to create new or enhance existing per-pupil facilities aid programs for charter schools.

Dated: February 27, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–04763 Filed 3–4–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–257–D]

Application To Export Electric Energy; Emera Energy Services, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Emera Energy Services, Inc. (EES) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 4, 2014.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be

transmitted by overnight mail, by electronic mail to *Lamont.Jackson@hq.doe.gov*, or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Lamont Jackson (Program Office) at 202–586–0808, or by email to *Lamont.Jackson@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On March 26, 2009, DOE issued Order No. EA–257–C, which authorized EES to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities effective April 5, 2009. That authority expires on April 5, 2014. On February 25, 2014, EES filed an application with DOE for renewal of the export authority contained in Order No. EA–257–C for an additional five-year term. EES is requesting that the notice of this filing be published in the **Federal Register** as soon as possible; that the period for the submission of comments be shortened; and that the Department issue an order in an expedited manner. Further, EES requests that the existing Export Authorization be extended beyond the expiration date, to remain in effect until the date DOE acts on this application.

In its application, EES states that it does not own any electric generating or transmission facilities, and it does not have a franchised service area. The electric energy that EES proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States and/or Canada. The existing international transmission facilities to be utilized by EES have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the EES application to export electric energy to Canada should be clearly marked with OE Docket No. EA–257–D. An additional copy is to be provided directly to Will Szubielski, c/o Emera Energy Inc., 1223 Lower Water Street, Halifax, Nova Scotia B3J 3S8 and Bonnie A. Suchman, Troutman Sanders LLP, 401 9th Street NW., Suite 1000, Washington, DC 20004. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845*, or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on February 27, 2014.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2014–04835 Filed 3–4–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–349–A]

Application To Export Electric Energy; Bruce Power Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Bruce Power Inc. (Applicant) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 4, 2014.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Lamont.Jackson@hq.doe.gov*, or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Lamont Jackson (Program Office) at 202–586–0808, or by email to *Lamont.Jackson@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On April 22, 2009, DOE issued Order No. EA–349, which authorized the Applicant to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on April 22, 2014. On February 18, 2014, the Applicant filed an application with DOE for renewal of the export authority contained in Order No. EA–349 for an additional ten-year term. Applicant request expedited review and issuance of Order to be effective on April 22, 2014, in order to avoid any lapse in authority to export electricity to Canada.

In its application, the Applicant states that it does not own any electric generating or transmission facilities, and it does not have a franchised service area. The electric energy that the Applicant proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States and/or Canada. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions

to intervene should be sent to the address provided above on or before the date listed above.

Comments on the Applicant application to export electric energy to Canada should be clearly marked with OE Docket No. EA–349–A. An additional copy is to be provided directly to Richard Horrobin, Bruce Power L.P., 177 Tie Road, R.R. #2, P.O. Box 1540, Building B10, Tiverton, ON N0G 2T0 and Vincenzo Franco, Van Ness Feldman, LLP, 1050 Thomas Jefferson Street NW., Washington, DC 20007. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845*, or by emailing Angela Troy at *Angela.Troy@hq.doe.gov*.

Issued in Washington, DC, on February 27, 2014.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2014–04839 Filed 3–4–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–287–B]

Application To Export Electric Energy; Emera Energy U.S. Subsidiary No. 1, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Emera Energy U.S. Subsidiary No. 1, Inc. (EE US No. 1) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 4, 2014.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Lamont.Jackson@hq.doe.gov*, or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Lamont Jackson (Program Office) at 202–586–0808, or by email to *Lamont.Jackson@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On March 26, 2009, DOE issued Order No. EA–287–A, which authorized EE US No. 1 to transmit electric energy from the United States to Canada as a power marketer for a five-year term using existing international transmission facilities. That authority expires on April 19, 2014. On February 25, 2014, EE US No. 1 filed an application with DOE for renewal of the export authority contained in Order No. EA–287–A for an additional five-year term. EE US No. 1 is requesting that the notice of this filing be published in the **Federal Register** as soon as possible; that the period for the submission of comments be shortened; and that the Department issue an order in an expedited manner. Further, EE US No. 1 requests that the existing Export Authorization be extended beyond the expiration date, to remain in effect until the date DOE acts on this application.

In its application, EE US No. 1 states that it does not own any electric generating or transmission facilities, and it does not have a franchised service area. The electric energy that EE US No. 1 proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States and/or Canada. The existing international transmission facilities to be utilized by EE US No. 1 have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the EE US No. 1 application to export electric energy to Canada should be clearly marked with OE Docket No. EA–287–B. An additional copy is to be provided directly to Will Szubielski, c/o Emera Energy Inc., 1223 Lower Water Street, Halifax, Nova Scotia B3J 3S8 and Bonnie A. Suchman, Troutman Sanders LLP, 401 9th Street NW., Suite 1000, Washington, DC 20004. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845*, or by emailing Angela Troy at *Angela.Troy@hq.doe.gov*.

Issued in Washington, DC, on February 27, 2014.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2014–04840 Filed 3–4–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). SEAB was reestablished pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES: Friday, March 28, 2014, 9:00 a.m.–12:00 p.m.

ADDRESSES: Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Karen Gibson, U.S. Department of Energy, 1000 Independence Avenue

SW., Washington, DC 20585; telephone (202) 586–3787 or facsimile (202) 586–1441; email: *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Department's basic and applied research, economic and national security policy, educational issues, operational issues, and other activities as directed by the Secretary.

Purpose of the Meeting: The meeting is the third quarterly meeting of the Board.

Tentative Agenda: The meeting will start at 9:00 a.m. on March 28th. The tentative meeting agenda includes a briefing on the loan guarantee programs, updates on the work of the SEAB task forces, presentation and discussion on the final reports of the FracFocus2.0 Task Force and the Hubs+ Task Force, and public comment. The task force reports are available for public review and comment on the SEAB Web site at: *www.energy.gov/seab.* Comments can be submitted by email at: *seab@hq.doe.gov* or in person at the meeting. The meeting will conclude at 12:00 p.m.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Karen Gibson no later than 5:00 p.m. on Tuesday, March 25, 2014, by email at: *seab@hq.doe.gov.* Please provide your name, organization, citizenship and contact information. Anyone attending the meeting will be required to present government-issued identification. Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the meeting on Friday, March 28, 2014. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 8:30 a.m. on March 28, 2014.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Karen Gibson, U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, or by email to: *seab@hq.doe.gov.*

Minutes: The minutes of the meeting will be available by contacting Ms. Gibson. She may be reached at the postal address or email address above or by visiting SEAB's Web site at *www.energy.gov/seab.*

Issued in Washington, DC, on February 27, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–04833 Filed 3–4–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC)

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). The Federal Advisory Committee Act, Pub. L. No. 92–463, 86 Stat. 770, requires notice of the meeting be announced in the **Federal Register**.

DATES: Tuesday, April 1, 2014, 8:30 a.m.–5:00 p.m.

Wednesday, April 2, 2014, 8:00 a.m.–11:30 a.m.

ADDRESSES: U. S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, Room 6A–112.

FOR FURTHER INFORMATION CONTACT: Email: *HTAC@nrel.gov* or at the mailing address: James Alkire, Deputy Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 15013 Denver West Parkway, Golden, CO, 80401.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under section 807 of the Energy Policy Act of 2005 (EPACT), Pub. L. No. 109–58; 119 Stat. 849.

Purpose of the Meeting: To provide advice and recommendations to the Secretary of Energy on the program authorized by Title VIII of EPACT.

Tentative Agenda: (updates will be posted on the web at: *http://hydrogen.energy.gov/advisory_htac.html).*

- HTAC Business (including public comment period)
- DOE Leadership Updates
- Program and Budget Updates
- HTAC Subcommittee Updates
- Open Discussion Period

Public Participation: The meeting is open to the public. Individuals who would like to attend and/or to make oral statements during the public comment period must register no later than 5:00 p.m. on Wednesday, March 26, 2014, by email at *HTAC@nrel.gov.* Foreign nationals must register no later than 5:00 p.m. on Friday, March 14, 2014. Foreign nationals will be required to fill out a questionnaire in order to have access to the meeting site and will be notified within 5–10 business days regarding their access to the meeting. An early confirmation of attendance will help to facilitate access to the building more quickly. Entry to the meeting room will be restricted to those who have confirmed their attendance in advance. Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government-issued identification. Those wishing to make a public comment are required to register. The public comment period will take place between 8:30 a.m. and 9:00 a.m. on April 1, 2014. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov/advisory_htac.html.*

Issued in Washington, DC, in February 27, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–04834 Filed 3–4–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Algal Biofuels Strategy Workshop

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: The Department of Energy (DOE) today announces an open meeting hosted by its Bioenergy Technologies Office (BETO) on the topic of algae-based biofuels research and development, titled the Algal Biofuels Strategy Workshop.

DATES: March 26, 2014, 8:30 a.m.–5:30 p.m., March 27, 2014 8:30 a.m.–11:45 p.m.

ADDRESSES: Charleston Marriott, 170 Lockwood Boulevard, Charleston, SC 29403.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to Daniel Fishman, Designated Federal Official for

the Workshop, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586–4705; Email: *Daniel.Fishman@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: *Purpose of Meeting:* To discuss research and development needed to achieve affordable, scalable, and sustainable algae-based biofuels.

Tentative Agenda: The workshop will include presentations on current research and development (R&D) strategies by DOE's BETO Algae Program, including explanation of the Multi-Year Program Plan, Technology Pathways, and technical targets, and will allow time for participant questions and open discussion of the Program's approach. The agenda will feature an R&D Breakthrough Round Robin, which will be an open forum for brief talks given to the general session by workshop participants. There will also be ten breakout sessions focused on priority areas in: (1) Algal Biology, (2) Cultivation, (3) Processing and Conversion, (4) Scaling and Integration, and (5) Analysis and Sustainability.

Public Participation: Members of the public are encouraged to participate in the open discussions of the workshop. To attend the meeting you must register at the following Web site: *www.eere.energy.gov/bioenergy/algal_strategy_workshop*

Issued in Golden, CO on January 30, 2014.

Nicole Blackstone,

Contracting Officer.

[FR Doc. 2014–04848 Filed 3–4–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Bio-Oil Co-Processing: Expanding the Refinery Supply System Workshop

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: The Department of Energy (DOE) today gives notice of an open workshop hosted by the Bioenergy Technologies Office's (BETO's) Conversion Program to discuss the current state of technology and efforts needed to understand and specify bio-oil intermediate requirements for use in petroleum refineries.

Dates and Times: Morning Session: April 3, 2014, 8:00 a.m.—12:00 p.m. Afternoon Session: April 3, 2014, 1:00 p.m.—5:00 p.m.

ADDRESSES: Renaissance New Orleans Arts Hotel, 700 Tchoupitoulas Street, New Orleans, LA 70130.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to—Liz Moore at (720) 356–1392 or by email at *Liz.Moore@go.doe.gov.*

SUPPLEMENTARY INFORMATION: As stated in the Bioenergy Technologies Office's (BETO's) Multi-Year Program Plan, the mission of BETO is to develop and transform our renewable biomass resources into commercially viable, high-performance biofuels, bioproducts, and biopower through targeted research, development, demonstration, and deployment supported through public and private partnerships. One of the options being pursued by BETO involves developing technologies capable of producing a bio-oil intermediate to be used as a petroleum refinery feedstock, leveraging existing infrastructure. BETO wants to identify the next step(s) in gathering information about the physiochemical properties, reactivities, and compatibilities of intermediates to petroleum refineries. Understanding and specifying bio-oil intermediate requirements for use in petroleum refineries and the limitations of the distribution infrastructure are critical. The workshop will convene university, national laboratory, industry, advocacy, government, and other stakeholders from both the renewable energy and petroleum refining industries to discuss the potential for bio-oil co-processing, challenges currently facing the refining industry, and the advantages that could be realized in a co-processing partnership.

Public Participation: Members of the public are encouraged to participate in open discussion at the workshop. For registration information, visit the following Web site: *http://www1.eere.energy.gov/bioenergy/bio-oil_2014_workshop.html.*

Issued in Golden, CO, on March 3, 2014.

Lalida Crawford,

Contracting Officer.

[FR Doc. 2014–04842 Filed 3–4–14; 8:45 am]

BILLING CODE 6450–01–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: ER14–221–000.
Applicants: Covanta Haverhill Associates, LP.
Description: Refund Report to be effective N/A.
Filed Date: 2/26/14.
Accession Number: 20140226–5121.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–416–001.
Applicants: Southwest Power Pool, Inc.
Description: Compliance to Integrated Marketplace Third Supplemental Filing to be effective 3/1/2014.
Filed Date: 2/25/14.
Accession Number: 20140225–5108.
Comments Due: 5 p.m. ET 3/18/14.

Docket Numbers: ER14–678–001.
Applicants: Niagara Wind Power, LLC.
Description: Amendment to December 18, 2013 Market-Based Tariff Filing to be effective 12/19/2013.
Filed Date: 2/26/14.
Accession Number: 20140226–5100.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–680–001.
Applicants: Stetson Wind II, LLC.
Description: Amendment to December 18, 2013 Market-Based Tariff Filing to be effective 12/19/2013.
Filed Date: 2/26/14.
Accession Number: 20140226–5095.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–682–001.
Applicants: Vermont Wind, LLC.
Description: Amendment to December 18, 2013 Market-Based Tariff Filing to be effective 12/19/2013.
Filed Date: 2/26/14.
Accession Number: 20140226–5093.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–685–001.
Applicants: Evergreen Wind Power III, LLC.
Description: Amendment to December 18, 2013 Market-Based Tariff Filing to be effective 12/19/2013.
Filed Date: 2/26/14.
Accession Number: 20140226–5090.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–686–001.
Applicants: Evergreen Wind Power, LLC.
Description: Amendment to December 18, 2013 Market-Based Tariff Filing to be effective 12/19/2013.
Filed Date: 2/26/14.
Accession Number: 20140226–5094.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–688–001.
Applicants: Canandaigua Power Partners II, LLC.
Description: Amendment to December 18, 2013 Market-Based Tariff Filing to be effective 12/19/2013.
Filed Date: 2/26/14.

Accession Number: 20140226–5088.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–695–002.
Applicants: Entergy Services, Inc.
Description: EES LBA Agreement Refile—Axiall 2–25–2014 to be effective 12/31/9998.
Filed Date: 2/25/14.
Accession Number: 20140225–5139.
Comments Due: 5 p.m. ET 3/18/14.

Docket Numbers: ER14–699–002.
Applicants: Entergy Services, Inc.
Description: EES LBA Agreement Refile—ETEC 2–25–2014 to be effective 12/31/9998.
Filed Date: 2/25/14.
Accession Number: 20140225–5140.
Comments Due: 5 p.m. ET 3/18/14.

Docket Numbers: ER14–703–002.
Applicants: Entergy Services, Inc.
Description: EES LBA Agreement Refile—Tenaska 2–25–2014 to be effective 12/31/9998.
Filed Date: 2/25/14.
Accession Number: 20140225–5138.
Comments Due: 5 p.m. ET 3/18/14.

Docket Numbers: ER14–721–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–02–25 Clean-Up Compliance to be effective 12/20/2013.
Filed Date: 2/25/14.
Accession Number: 20140225–5113.
Comments Due: 5 p.m. ET 3/18/14.

Docket Numbers: ER14–1368–000.
Applicants: The Narragansett Electric Company.
Description: Notice of Cancellation of Interconnection Agreement with Pontiac Energy Corp. to be effective 4/27/2014.
Filed Date: 2/25/14.
Accession Number: 20140225–5111.
Comments Due: 5 p.m. ET 3/18/14.

Docket Numbers: ER14–1369–000.
Applicants: Southwest Power Pool, Inc.
Description: 1765R9 KCP&L–GMO NITSA NOA to be effective 2/1/2014.
Filed Date: 2/26/14.
Accession Number: 20140226–5038.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–1370–000.
Applicants: Southwest Power Pool, Inc.
Description: 1977R4 Nemaha-Marshall Electric Cooperative NITSA NOA to be effective 2/1/2014.
Filed Date: 2/26/14.
Accession Number: 20140226–5052.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–1371–000.
Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley Power—Amendments to Rate Schedule to be effective 4/26/2014.
Filed Date: 2/26/14.
Accession Number: 20140226–5062.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–1372–000.
Applicants: Arizona Public Service Company.
Description: Cancellation of Amendment 1 to Rate Schedule No. 23 of Arizona Public Service Company.
Filed Date: 2/26/14.
Accession Number: 20140226–5066.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–1373–000.
Applicants: Energy Utility Group, LLC.
Description: EUG MBR Application to be effective 3/31/2014.
Filed Date: 2/26/14.
Accession Number: 20140226–5081.
Comments Due: 5 p.m. ET 3/19/14.

Docket Numbers: ER14–1374–000.
Applicants: Southwest Power Pool, Inc.
Description: 607R22 Westar Energy, Inc. NITSA NOA to be effective 2/1/2014.
Filed Date: 2/26/14.
Accession Number: 20140226–5082.
Comments Due: 5 p.m. ET 3/19/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–26–000.
Applicants: ITC Great Plains, LLC.
Description: Supplement to January 31, 2014 Application pursuant to Section 204 of the Federal Power Act of ITC Great Plains, LLC for authorization to issue debt securities.
Filed Date: 2/24/14.
Accession Number: 20140224–5088.
Comments Due: 5 p.m. ET 3/17/14.

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: February 26, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–04897 Filed 3–4–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–504–000.
Applicants: PGPipeline LLC.
Description: Annual Adjustment of Fuel and Gas Loss Retention Percentage to be effective 4/1/2014.
Filed Date: 2/24/14.
Accession Number: 20140224–5053.
Comments Due: 5 p.m. ET 3/10/14.

Docket Numbers: RP14–505–000.
Applicants: Empire Pipeline, Inc.
Description: Annual Report Pursuant to GTC 23.5 (CY2013).
Filed Date: 2/24/14.
Accession Number: 20140224–5056.
Comments Due: 5 p.m. ET 3/10/14.

Docket Numbers: RP14–506–000.
Applicants: Gulf South Pipeline Company, LP.
Description: PAL Neg Rate Agmts (42036, 42037, 42038, 42039, 42042, 42043, 42044) to be effective 2/22/2014.
Filed Date: 2/24/14.
Accession Number: 20140224–5101.
Comments Due: 5 p.m. ET 3/10/14.

Docket Numbers: RP14–507–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Annual Fuel Tracker Filing 2014 to be effective 4/1/2014.
Filed Date: 2/24/14.
Accession Number: 20140224–5114.
Comments Due: 5 p.m. ET 3/10/14.

Docket Numbers: RP14–508–000.
Applicants: Stingray Pipeline Company, L.L.C.
Description: Event Tracker Filing to be effective 3/1/2014.
Filed Date: 2/24/14.
Accession Number: 20140224–5130.
Comments Due: 5 p.m. ET 3/10/14.

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: February 25, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–04900 Filed 3–4–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R07–OAR–2013–0800; FRL–9907–52–Region–7]

Adequacy Determination for the St. Louis Area Ozone Early Progress State Implementation Plan Motor Vehicle Emissions Budgets for Transportation Conformity Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that we have found that the motor vehicle emissions budgets (MVEB) contained in the 8-hour Ozone Early Progress Plan submitted as a State Implementation Plan (SIP) revision on August 16, 2013, by the Missouri Department of Natural Resources (MDNR), are adequate for transportation conformity purposes. Emissions estimates for 2015 were included in the 8-hour Ozone Early Progress plan based on projected emission inventories for that year which established the MVEBs. This notice formalizes the 2015 mobile emissions estimates as adequate MVEBs for future conformity determinations related to the ozone NAAQS.

DATES: This notice is effective on March 19, 2014.

FOR FURTHER INFORMATION CONTACT: Steven Brown at (913) 551–7718, by email at *brown.steven@epa.gov*, or by mail at US Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA. The word ''budget(s)'' refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The word ''SIP'' in this document refers to the Early Progress Plan for the St. Louis 8-Hour Ozone Nonattainment Area submitted by MDNR to EPA as a SIP revision on August 16, 2013.

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 7 sent a letter to MDNR on October 28, 2013, stating that the MVEBs contained in the Early Progress Plan were adequate for transportation conformity purposes. As a result of EPA's finding, the State of Missouri must use the MVEBs from the August 16, 2013, 8-hour Ozone Early Progress Plan for future transportation conformity determinations for the St. Louis area for the ozone NAAQS. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act, as amended in 1990. EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedure for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the SIP. EPA plans to take action on the SIP at a later date. We have described our process for determining the adequacy of submitted SIP budgets in 40 CFR 93.118(f), and have followed this rule in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 25, 2014.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2014–04888 Filed 3–4–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9907–48–OW]

Notice of a Public Meeting: The National Drinking Water Advisory Council (NDWAC) Lead and Copper Rule Working Group Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a public meeting of the National Drinking Water Advisory Council (NDWC) Lead and Copper Rule Working Group (LCRWG). The meeting is scheduled for March 25 and 26, 2014, in Arlington, VA. During this meeting, the LCRWG and the EPA will focus discussions on the Lead and Copper Rule revision issues associated with Optimal Corrosion Control Treatment.

DATES: The meeting on March 25, 2014, will be held from 9:00 a.m. to 5:00 p.m., Eastern Time, and on March 26, 2014, from 9:00 a.m. to 4:00 p.m., Eastern Time.

ADDRESSES: The public meeting will be held at the Cadmus Group Inc., 1555 Wilson Blvd., Suite 300, Arlington, VA, and will be open to the public. All attendees must sign in with the security desk and show photo identification to enter the building.

FOR FURTHER INFORMATION CONTACT: For more information about this meeting or to request written materials contact Lameka Smith, Standards and Risk Management Division, Office of Ground Water and Drinking Water; by phone (202) 564–1629 or by email at *LCRWorkingGroup@epa.gov. mailto:* For additional information about the Lead and Copper Rule, please visit: *http://water.epa.gov/lawsregs/rulesregs/sdwa/lcr/index.cfm.*

SUPPLEMENTARY INFORMATION:

Details about Participating in the Meeting: Members of the public who would like to register for this meeting should contact Lameka Smith by March 18, 2014, by email at *LCRWorkingGroup@epa.govmailto:* or by phone at 202–564–1629. The LCRWG will allocate one hour for the public's input at the meeting on Tuesday, March 25, 2014. Oral statements will be limited to five minutes at the meeting. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Lameka Smith no later than March 18, 2014. Any person who wishes to file a written statement can do so before or after the LCRWG meeting. Written statements intended for the meeting must be received by March 18, 2014, to be distributed to all members of the working group before the meeting. Any statements received on or after the date specified will become part of the permanent file for the meeting and will

be forwarded to the LCRWG members for their information.

Special Accommodations: For information on access or to request special accommodations for individuals with disabilities please contact Lameka Smith at (202) 564–1629 or by email at *LCRWorkingGroup@epa.govmailto:* at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: February 26, 2014.

Peter G. Grevatt,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2014–04891 Filed 3–4–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012195–001.

Title: CSCL/UASC Slot Exchange Agreement, Asia-Europe/Mediterranean—U.S. East Coast AEX7/MINA.

Parties: China Shipping Container Lines Co., Ltd. and China Shipping Container Lines (Hong Kong) Co., Ltd. (acting as a single party) and United Arab Shipping Company (S.A.G.).

Filing Party: Brett M. Esber, Esquire; Blank Rome LLP; 600 New Hampshire Avenue NW., Washington, DC 20037.

Synopsis: The amendment increases the number of slots exchanged under the agreement.

Agreement No.: 012249.

Title: CSAV/Hapag Lloyd Mexico Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A. and Hapag Lloyd A.G.

Filing Party: Walter H. Lion, McLaughlin & Stern, LLP; 260 Madison Avenue, New York, NY 10016.

Synopsis: The agreement authorizes CSAV to charter space from HLAG in the trade between ports on the Pacific coast of Mexico, on the one hand, and ports on the Pacific coast of the United States, on the other hand.

By Order of the Federal Maritime Commission.

Dated: February 28, 2014.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2014–04880 Filed 3–4–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

B&C Luxury Auto Ltd. (NVO), 180 Poinier Street, Newark, NJ 07114, Officer: Sergiu Bejenari, President (QI), Application Type: New NVO License.

Concept Cargo Freight & Logistics Inc (NVO), 10925 NW 27th Street, Suite 201H, Miami, FL 33172, Officers: Milton A. Rocha, Director (QI), Tania M. Reis, Director, Application Type: Name Change to Concept Cargo Freight & Logistics Inc dba Serpa Group & QI Change.

FH Interamerica, LLC (NVO & OFF), 4430 Trade Center Blvd., Laredo, TX 78045, Officers: Francisco J. Fernandez Morelos-Zaragoza, Secretary (QI), Francisco J. Fernandez Hinojosa, President, Application Type: New NVO & OFF License.

International Logistics USA LLC (NVO & OFF), 8225 NW 80th Street, Miami, FL 33166, Officers: Graciela Crespo, Secretary (QI), Ignacio Diaz Mantel, President, Application Type: New NVO & OFF License.

Morrison Express Corporation (U.S.A.) (NVO & OFF), 2000 Hughes Way, El Segundo, CA 90245, Officers: Neungho Shin, Regional Operations Director (QI), Danny Chiu, Chairman, Application Type: QI Change.

NEC Logistics America, Inc. (NVO & OFF), 18615 Ferris Place, Rancho Dominguez, CA 90220, Officers: Takahashi Kazuhiko, President, Tochigi Nobuko, Assistant Secretary, Application Type: Name Change to Nippon Express NEC Logistics America, Inc.

By the Commission.

Dated: February 24, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–04803 Filed 3–4–14; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 20, 2014.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Daniel G. O'Dell, the Daniel G. O'Dell Revocable Trust, Carefree Crossroads, Inc., KDawg Partners, LP, Wanda K. O'Dell, and the Wanda K. O'Dell Revocable Trust, all of Liberty, Missouri; Gary A. O'Dell, the Gary A. O'Dell Family 2011 Trust, Amy L. O'Dell, and the Amy L. O'Dell Family 2011 Trust, all of Kansas City, Missouri; and Karen M. O'Dell and the Karen M. O'Dell Family 2011 Trust, both of Palo Alto, California,* to retain control of Liberty Bancorp, Inc., and thereby indirectly control BankLiberty, both of Liberty, Missouri.

Board of Governors of the Federal Reserve System, February 28, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–04844 Filed 3–4–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0868]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry: Use of Serological Tests To Reduce the Risk of Transmission of Trypanosoma Cruzi Infection in Whole Blood and Blood Components for Transfusion

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 4, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0681. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Use of Serological Tests To Reduce the Risk of Transmission of Trypanosoma Cruzi Infection in Whole Blood and Blood Components for Transfusion—(OMB Control Number 0910–0681)—Extension

The guidance implements the donor screening recommendations for the FDA-approved serological test systems for the detection of antibodies to Trypanosoma cruzi (T. cruzi). The use of the donor screening tests are to reduce the risk of transmission of T. cruzi infection by detecting antibodies to T. cruzi in plasma and serum samples from individual human donors, including donors of whole blood and blood components intended for transfusion. The guidance recommends that establishments that manufacture whole blood and blood components intended for transfusion should notify consignees of all previously collected in-date blood and blood components to quarantine and return the blood components to establishments or to destroy them within 3 calendar days after a donor tests repeatedly reactive by a licensed test for T. cruzi antibody. When establishments identify a donor who is repeatedly reactive by a licensed test for T. cruzi antibodies and for whom there is additional information indicating risk of T. cruzi infection, such as testing positive on a licensed supplemental test (when such test is available) or until such test is available, information that the donor or donor's mother resided in an area endemic for Chagas disease (Mexico, Central and South America) or as a result of other medical diagnostic testing of the donor indicating T. cruzi infection, we recommend that the establishment notify consignees of all previously distributed blood and blood components collected during the ''lookback'' period and, if blood and blood components were transfused, encourage consignees to notify the recipient's physician of record of a possible increased risk of T. cruzi infection.

Respondents to this information collection are establishments that manufacture whole blood and blood components intended for transfusion. We believe that the information collection provisions in the guidance for establishments to notify consignees and for consignees to notify the recipient's physician of record do not create a new burden for respondents and are part of usual and customary business practices. Since the end of January 2007, a number of blood centers representing a large proportion of U.S. blood collections have been testing donors using a licensed assay. We believe these establishments have already developed standard operating procedures for notifying consignees and the consignees to notify the recipient's physician of record.

In the **Federal Register** of August 2, 2013 (78 FR 46954), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

The guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR 601.12 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR 606.100, 606.121, 606.122, 606.160(b)(ix), 606.170(b), 610.40, and 630.6 have been approved under OMB control number 0910–0116; the collections of information in 21 CFR 606.171 have been approved under OMB control number 0910–0458.

Dated: February 27, 2014.

Peter Lurie,

Acting Associate Commissioner for Policy and Planning.

[FR Doc. 2014–04776 Filed 3–4–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0225]

Announcement of Center for Biologics Evaluation and Research's Move to the Food and Drug Administration's White Oak Campus

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Center for Biologics Evaluation and Research (CBER) will be moving its offices and laboratories from various Rockville and Bethesda, MD, locations to the FDA White Oak campus in Silver Spring, MD. The move will commence on or about May 1, 2014, and will end approximately 8 weeks later, on or about July 1, 2014. During this time persons may continue to send applications and other submissions electronically via the FDA Electronic Submissions Gateway to CBER for review, evaluation, or other handling. However, persons should send submissions on paper or on electronic media (CD, DVD), as well as lot release samples to CBER's new mailing addresses once they take effect. CBER's new mailing addresses, including the dates they take effect, as well as other information concerning CBER's move to the FDA White Oak campus in Silver Spring, MD, will be provided on the FDA Web site at *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CBER/ucm385240.htm*, as they become available. During the period required for relocation of files, equipment, and Agency personnel, CBER will make every effort to meet its review time frames and minimize any potential

delay. Should delays affecting receipt and review of applications and other submissions occur, we intend to update the FDA Web site as needed.

FOR FURTHER INFORMATION CONTACT: John Reilly, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 201 *et seq.*) and section 351 of the Public Health Service Act (42 U.S.C. 262), CBER is responsible for receiving, reviewing, evaluating, and taking appropriate actions on a variety of regulated activities, including but not limited to:

(1) Investigational new drug applications and investigational device exemption applications for certain products for which CBER has been assigned responsibility;

(2) Biologics license applications submitted for biological products;

(3) New drug applications, abbreviated new drug applications, premarket approval applications, and premarket notifications for which CBER has been assigned responsibility; and

(4) Protocols and samples submitted for official release (lot release).

In an effort to consolidate, FDA is moving CBER's offices and laboratories from various Rockville and Bethesda, MD, locations to the FDA White Oak campus in Silver Spring, MD. The move will commence on or about May 1, 2014, and will end approximately 8 weeks later, on or about July 1, 2014. During this time, persons may continue to send applications and other submissions electronically via the FDA Electronic Submissions Gateway to CBER for review, evaluation, or other handling. However, persons should send submissions on paper or on electronic media (CD, DVD) (including lot release protocols) to CBER's new mailing addresses once they take effect. CBER's new mailing addresses, including the dates they take effect, as well as other information concerning CBER's move to the FDA White Oak campus in Silver Spring, MD, will be provided on the FDA Web site at *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CBER/ucm385240.htm* as they become available.

Lot release samples should be sent to the appropriate new mailing address when it takes effect. Please note, however, that because of the relocation of CBER's Sample Custodian (the person(s) responsible for receiving official samples, including lot release samples) to the FDA White Oak campus, CBER will not be able to receive lot release samples during the 2 weeks surrounding this personnel move. This pause will allow us to assure the orderly transfer of lot release samples to the FDA White Oak campus in the weeks immediately before and after this move. Therefore, lot release samples should be shipped to CBER either (1) before the pause, using the current address, or (2) after the pause, using the new address once it takes effect. See the FDA Web site at *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CBER/ucm385240.htm* for the dates of this pause. We also plan to communicate directly with those manufacturers affected by this temporary interruption in CBER's receipt of lot release samples.

During the period required for relocation of files, equipment, and Agency personnel, CBER will make every effort to meet its review time frames and minimize any potential delay. Should delays affecting receipt and review of applications and other submissions occur, we intend to update the FDA Web site as needed.

II. Comments

Persons who have questions or wish further information concerning CBER's move to the FDA White Oak campus in Silver Spring, MD, may access the FDA Web site at *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CBER/ucm385240.htm* for more information. CBER intends to update this Web site periodically.

Dated: February 27, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–04810 Filed 3–4–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0430]

Draft Guidance for Industry on Ingredients Declared as Evaporated Cane Juice; Reopening of Comment Period; Request for Comments, Data, and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period; request for comments, data, and information.

SUMMARY: The Food and Drug Administration (FDA or we) is reopening the comment period for the draft guidance for industry entitled ''Ingredients Declared as Evaporated Cane Juice.'' A notice announcing the availability of the draft guidance was published in the **Federal Register** of October 7, 2009, to advise industry of FDA's view that the common or usual name for the solid or dried form of sugar cane syrup is ''dried cane syrup,'' and that sweeteners derived from sugar cane syrup should not be declared on food labels as ''evaporated cane juice'' because that term falsely suggests the sweeteners are juice. We have not reached a final decision on the common or usual name for this ingredient and are reopening the comment period to request further comments, data, and information about the basic nature and characterizing properties of the ingredient sometimes declared as ''evaporated cane juice,'' how this ingredient is produced, and how it compares with other sweeteners.

DATES: Submit either electronic or written comments by May 5, 2014.

ADDRESSES: Submit electronic comments, data, and information to *http://www.regulations.gov.* Submit written comments, data, and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniel Y. Reese, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 7, 2009 (74 FR 51610), we published a notice announcing the availability of a draft guidance for industry entitled ''Ingredients Declared as Evaporated Cane Juice.'' We issued the draft guidance to seek comment on our preliminary thinking regarding the use of the term ''evaporated cane juice'' on food labels to declare the presence of sweeteners derived from sugar cane syrup (''cane syrup''). The draft guidance advised industry of our view that the term ''evaporated cane juice'' is not the common or usual name of any type of sweetener, including sweeteners derived from cane syrup. The draft guidance explained that, because cane

syrup has a standard of identity defined by regulation in 21 CFR 168.130, the common or usual name for the solid or dried form of cane syrup is ''dried cane syrup.'' Additionally, the draft guidance stated that sweeteners derived from cane syrup should not be declared as ''evaporated cane juice'' because such sweeteners are not ''juice'' as defined in 21 CFR 120.1(a). The draft guidance also stated that because sweeteners derived from cane syrup are not juice, they should not be included in the percentage juice declaration on the labels of beverages that are represented to contain fruit or vegetable juice (see 21 CFR 101.30).

We are reopening the comment period to obtain additional data and information to better understand: (1) The basic nature and characterizing properties of the ingredient in question; (2) the method of production of this ingredient; and (3) the difference between this ingredient and other sweeteners made from sugar cane, e.g., molasses, raw sugar, brown sugar, turbinado sugar, muscovado sugar, and demerara sugar.

II. Request for Additional Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

FDA requests comments, including supporting data and other information, about the basic nature and characterizing properties of the ingredient sometimes declared as ''evaporated cane juice,'' how this ingredient is produced, and how it compares with other sweeteners derived from sugar cane. We specifically request comments and supporting data on the following questions:

1. How is ''evaporated cane juice'' manufactured? Specifically, how is its method of manufacture different from that of other sweeteners made from sugar cane (such as cane sugar, cane syrup, etc.)? Is there a uniform industry standard for this ingredient as traded in the marketplace?

2. FDA regulations provide general principles for common or usual names to be used in the labeling of foods. The name must describe the basic nature of the food or its characterizing properties or ingredients. Moreover, the name must be uniform among all identical or similar products and may not be confusingly similar to the name of any other food that is not encompassed within the same name (§ 102.5(a) (21 CFR 102.5(a))).

a. We noted in the draft guidance that sweeteners derived from sugar cane syrup should not be declared in the ingredient list by names which suggest that the ingredients are juice, such as ''evaporated cane juice.'' Does the name ''evaporated cane juice'' adequately convey the basic nature of the food and its characterizing properties or ingredients, consistent with the principles in § 102.5(a)? Why or why not? How does the name ''evaporated cane juice'' square with the principle that the name of a food may not be confusingly similar to the name of any other food that is not encompassed within the same name, given the significant differences in source and composition between this ingredient and beverages that are regulated as ''juice'' under FDA's juice labeling and juice hazard analysis and critical control point (HACCP) regulations (e.g., orange juice and tomato juice)?

b. There are a number of other sweeteners that are derived from sugar cane (such as raw sugar, cane sugar, cane syrup, demerara sugar, muscovado sugar, turbinado sugar, etc.) and that use the term ''sugar'' or ''syrup'' as a part of their name. How is ''evaporated cane juice'' similar to or different from those other sugars and syrups derived from sugar cane in terms of basic nature and characterizing properties or ingredients? Considering that the ingredient sometimes declared as ''evaporated cane juice'' is also a sweetener derived from sugar cane, what would be the rationale for establishing a common or usual name that identifies this ingredient as a ''juice'' rather than as a ''sugar'' or ''syrup,'' and how would such an approach square with the principle that common or usual names should be uniform and consistent among similar foods? What data and other information support your views on these questions?

3. The draft guidance suggested the alternative name ''dried cane syrup'' for the ingredient sometimes declared as ''evaporated cane juice.'' There was a diversity of views in the comments on the guidance about the suggested name, and FDA would like to better understand the reasoning of the comments that objected to it. Applying the principles for common or usual names in § 102.5, in what way does ''dried cane syrup'' fail to identify or describe this ingredient's basic nature or characterizing properties or ingredients? What information and data support or oppose your view?

After reviewing the comments received, we intend to revise the draft guidance, if appropriate, and issue it in final form, in accordance with FDA's good guidance practice regulations in 21 CFR 10.115.

For a copy of the draft guidance or to view comments submitted in response to the draft guidance, please go to *http://www.regulations.gov* and search for the docket number found in brackets in the heading of this document.

Dated: February 27, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–04802 Filed 3–4–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2006–D–0157]

Guidance for Industry: Biologics License Applications for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic and Immunologic Reconstitution in Patients With Disorders Affecting the Hematopoietic System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Biologics License Applications for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic and Immunologic Reconstitution in Patients With Disorders Affecting the Hematopoietic System'' dated March 2014. The guidance document provides recommendations for manufacturers, generally cord blood banks, to apply for licensure of minimally manipulated, unrelated allogeneic placental/umbilical cord blood, for hematopoietic and immunologic reconstitution in patients with disorders affecting the hematopoietic system that are inherited, acquired, or result from myeloablative treatment. The guidance document is intended to assist manufacturers in obtaining a biologics license. The guidance contains information about the manufacture of minimally manipulated, unrelated allogeneic placental/umbilical cord blood and how to comply with

applicable regulatory requirements. The guidance announced in this document finalizes the draft guidance of the same title dated June 2013 and supersedes the guidance entitled ''Guidance for Industry: Minimally Manipulated, Unrelated, Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution for Specified Indications'' dated October 2009.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Biologics License Applications for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic and Immunologic Reconstitution in Patients With Disorders Affecting the Hematopoietic System'' dated March 2014. The guidance document provides recommendations for manufacturers to apply for licensure of minimally manipulated, unrelated allogeneic placental/umbilical cord blood, for hematopoietic and immunologic reconstitution in patients with disorders affecting the hematopoietic system that are inherited, acquired, or result from myeloablative treatment. The guidance document is intended to assist manufacturers obtain a biologics license. The guidance contains information about the manufacture of minimally manipulated, unrelated, allogeneic placental/umbilical cord blood and how to comply with applicable regulatory requirements.

In the **Federal Register** of June 17, 2013 (78 FR 36196), FDA announced the availability of the draft guidance of the same title dated June 2013. FDA received a few comments on the draft guidance and those comments were considered as the guidance was finalized. Minor changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance of the same title dated June 2013 and supersedes the guidance entitled ''Guidance for Industry: Minimally Manipulated, Unrelated, Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution for Specified Indications'' dated October 2009.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Elsewhere in this issue of the **Federal Register**, we also are announcing the availability of another, related guidance entitled ''Guidance for Industry and FDA Staff: Investigational New Drug Applications for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic and Immunologic Reconstitution in Patients with Disorders Affecting the Hematopoietic System.'' That guidance supersedes the document entitled ''Guidance for Industry and FDA Staff: Investigational New Drug Applications (INDs) for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution for Specified Indications'' dated June 2011.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 201 have been approved under OMB control number 0910–0572; 21 CFR part 211 have been approved under OMB control number 0910–0139; 21 CFR part 600 have been approved under OMB control number 0910–0308; 21 CFR parts 601 and 610, and Form FDA 356h have been approved under OMB control number 0910–0338; and 21 CFR part 1271 have been approved under OMB control number 0910–0543.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 27, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–04813 Filed 3–4–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0490]

Guidance for Industry and Food and Drug Administration Staff: Investigational New Drug Applications for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic and Immunologic Reconstitution in Patients With Disorders Affecting the Hematopoietic System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry and FDA Staff: Investigational New Drug Applications for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic and Immunologic Reconstitution in Patients With Disorders Affecting the Hematopoietic System'' dated March

2014. The guidance document provides advice to potential sponsors, such as cord blood banks, registries, transplant centers, or individual physicians serving as sponsor-investigators, to assist in the submission of an investigational new drug application (IND) for certain hematopoietic progenitor cells from placental/umbilical cord blood (HPC, Cord Blood), when such HPC, Cord Blood units are not licensed, and when a suitable human leukocyte antigen (HLA) matched cord blood transplant is needed for hematopoietic and immunologic reconstitution in patients with disorders affecting the hematopoietic system that are inherited, acquired, or result from myeloablative treatment and there is no satisfactory alternative treatment available. If unlicensed HPC, Cord Blood units are made available for clinical use, they must be distributed under an IND. The guidance announced in this document finalizes the draft guidance of the same title dated June 2013 and supersedes the final guidance entitled ''Guidance for Industry and FDA Staff: Investigational New Drug Applications (INDs) for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution for Specified Indications'' dated June 2011.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Tami Belouin, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry and FDA Staff: Investigational New Drug Applications for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic and Immunologic Reconstitution in Patients With Disorders Affecting the Hematopoietic System,'' dated March 2014. The guidance provides advice to potential sponsors to assist in the submission of an IND for certain HPC, Cord Blood, when such HPC, Cord Blood units are not licensed in accordance with title 21 of the Code of Federal Regulations part 601 (21 CFR part 601), and when a suitable HLA matched cord blood transplant is needed for hematopoietic and immunologic reconstitution in patients with disorders affecting the hematopoietic system that are inherited, acquired, or result from myeloablative treatment and there is no satisfactory alternative treatment available. If unlicensed HPC, Cord Blood units are made available for clinical use, they must be distributed under an IND meeting the applicable requirements in 21 CFR part 312.

In the **Federal Register** of June 17, 2013 (78 FR 36194), FDA announced the availability of the draft guidance of the same title dated June 2013. FDA received no comments on the draft guidance and only editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated June 2013 and supersedes the final guidance entitled ''Guidance for Industry and FDA Staff: Investigational New Drug Applications (INDs) for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution for Specified Indications'' dated June 2011.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

Elsewhere in this issue of the **Federal Register**, we also are announcing the availability of another, related guidance entitled ''Guidance for Industry: Biologics License Applications for Minimally Manipulated, Unrelated Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic and Immunologic Reconstitution in Patients With Disorders Affecting the Hematopoietic System.'' That guidance supersedes the document entitled ''Guidance for Industry: Minimally Manipulated, Unrelated, Allogeneic Placental/Umbilical Cord Blood Intended for Hematopoietic Reconstitution for Specified Indications'' dated October 2009.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; 21 CFR part 56 have been approved under OMB control number 0910–0130; 21 CFR part 1271 have been approved under OMB control number 0910–0543; and Form FDA 1571 has been approved under OMB control number 0910–0014.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 27, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–04812 Filed 3–4–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0283]

Guidance for Industry on Chemistry, Manufacturing, and Controls Postapproval Manufacturing Changes To Be Documented in Annual Reports; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''CMC Postapproval Manufacturing Changes To Be Documented in Annual Reports.'' This guidance provides recommendations to holders of new drug applications (NDAs) and abbreviated new drug applications (ANDAs) regarding the types of changes to be documented in annual reports. Specifically, the guidance describes chemistry, manufacturing, and controls (CMC) postapproval manufacturing changes that FDA has determined will likely have a minimal potential to have an adverse effect on product quality and, therefore, should be documented by applicants in an annual report. (The guidance excludes positron emission tomography drug products.)

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert Iser, Office of Pharmaceutical Science, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 4178, Silver Spring, MD 20993–0002, 301–796–2400, *Robert.Iser@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''CMC Postapproval Manufacturing Changes To Be Documented in Annual Reports.'' This guidance provides recommendations to holders of NDAs and ANDAs regarding the types of CMC postapproval manufacturing changes that FDA has determined will likely have a minimal potential to have an adverse effect on product quality, and therefore, should be documented by applicants in an annual report under § 314.70(d) (21 CFR 314.70(d)).

On June 25, 2010 (75 FR 36421), FDA announced the availability of the draft version of this guidance. The public comment period closed on September 23, 2010. A number of comments were received from the public, all of which the Agency considered carefully as it finalized the guidance and made appropriate changes. Any changes to the guidance were minor and made to clarify statements in the draft guidance.

In its September 2004 final report, ''Pharmaceutical Current Good Manufacturing Practices (CGMPs) for the 21st Century—A Risk-Based Approach'' (Pharmaceutical Product Quality Initiative, *http://www.fda.gov/Drugs/DevelopmentApprovalProcess/Manufacturing/QuestionsandAnswersonCurrentGoodManufacturingPracticescGMPforDrugs/ucm137175.htm)*, FDA stated that to keep pace with the many advances in quality management practices in manufacturing and to enable the Agency to more effectively allocate its limited regulatory resources, FDA would implement a cooperative, risk-based approach for regulating pharmaceutical manufacturing. As part of this approach, FDA determined that to provide the most effective public health protection, its CMC regulatory review should be based on an understanding of product risk and how best to manage this risk.

The number of CMC manufacturing supplements for NDAs and ANDAs has continued to increase over the last several years. In connection with FDA's Pharmaceutical Product Quality Initiative and its risk-based approach to CMC review, FDA has evaluated the types of changes that have been submitted in CMC postapproval manufacturing supplements and determined that many of the changes being reported present low risk to the quality of the product and do not need to be submitted in supplements.

Based on its risk-based evaluation, FDA developed a list (attached as an appendix to the guidance) to provide additional current recommendations to companies regarding some postapproval manufacturing changes for NDAs and ANDAs that may be considered to have a minimal potential to have an adverse effect on product quality, and, therefore, may be classified as a change to be documented in the next annual report (i.e., notification of a change after implementation) rather than in a supplement.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on CMC postapproval manufacturing changes to be documented in annual reports. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Paperwork Reduction Act of 1995

This guidance contains collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information have been approved under OMB control number 0910–0758. This guidance also refers to the following previously approved collections of information: (1) The submission of supplements to FDA for certain changes to an approved application in accordance with § 314.70 and 21 CFR 314.71; (2) the submission of annual reports to FDA (Form FDA 2252) in accordance with § 314.81(b)(2) (21 CFR 314.81(b)(2)); (3) the submission of supplements to an approved ANDA for changes that require FDA approval; and (4) other post-marketing reports for ANDAs in accordance with 21 CFR 314.98(c), of which the estimate for annual reports is included under § 314.81(b)(2). FDA currently has OMB approval for these collections of information under OMB control number 0910–0001.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: February 27, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–04811 Filed 3–4–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Software for 3D Spectral Fingerprint Based Consensus Modeling Using Orthogonal PLS and Tanimoto Similarity KNN Techniques

Description of Technology: This technology is a software tool for improving molecular modeling. The software addresses data matrices processed in rows instead of columns and the result of these approaches are combined. To process data in rows, the technique uses a measure of similarity known as ''Tanimoto Similarity'' operating on pairs of objects. The property values of the top most similar objects are normalized and used as coefficients to predict the property of interest. These predictions can then be used in combination with the predictions obtained by multivariate techniques to improve the quality of the consensus model in comparison to the individual predictions. Since, in the case of multivariate techniques, the information is accessed in columns, while for the similarity based technique it is accessed in rows, the two types of techniques provide complementary information. Thus, more useful information can be extracted from the same data matrix. Also contemplated is the use of consensus modeling by letting two algorithms (PLS and KNN) operate on descriptor matrices of different size. If each of these matrices is processed by a different model building algorithm and a consensus model between two or more such individual models is built, the resulting model would benefit from both: i) the partial orthogonality of the modeling techniques and ii) the complementarity of the information contained in 3D–SDAR matrices of different granularity.

Potential Commercial Applications:

- Drug Design
- Drug Development

Competitive Advantages:

- Matrix processing of molecules of biological interest
- High Fit-Activity Prediction capacity

Development Stage:

- Early-stage
- In vitro data available

Inventors: Svetoslav H. Slavov, Jon G. Wilkes, Rick Beger, Dan A. Buzatu, Bruce A. Pearce (all of FDA)

Publications:

1. Slavov SH, et al. ^{13}C NMR-distance matrix descriptors: optimal abstract 3D space granularity for predicting estrogen binding. J Chem Inform Model. 2012 Jul 23;52(7):1845–64. [PMID 22681591]
2. Slavov SH, et al. Complementary PLS and KNN algorithms for improved 3D–QSDAR consensus modeling of AhR binding. J Cheminform. 2013 Nov 21;5(1):47–62. [PMID 24257141]
3. Stoyanova-Slavova IB, et al. PLS and KNN algorithms for improved 3D–QSDAR consensus modeling of acute toxicity. Environ Toxicol Chem. 2014 Jan 27 (Epub ahead of print). [PMID 24464801]

Intellectual Property: HHS Reference No. E–015–2014/0—Software Materials. Patent protection is not being pursued for this technology.

Related Technologies:

- HHS Reference No. E–209–1999/1—US Patent 6,898,533 issued 24 May 2005
- HHS Reference No. E–297–2001/0—US Patent 7,996,156 issued 09 Aug 2011

Licensing Contact: Michael Shmilovich, Esq., CLP; 301–435–6019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The Food and Drug Administration is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Molecular Modeling/Drug Design. For collaboration opportunities, please contact Ashley Groves at 870–543–7956.

Multivalent, Multiple-Antigenic-Peptides for Serological Detection of HIV–1 Groups -M, -N, -O, and HIV–2

Description of Technology: This CDC-developed invention pertains to multivalent antigenic peptides (MAPs) that can be used in a variety of HIV/AIDS diagnostics. There are two types of HIV: HIV–1 and HIV–2. HIV–1 is subdivided into groups M, N, and O, while HIV–2 is subdivided into subtypes A and B. Within HIV -1 group M, several different subtypes and numerous forms of recombinant viruses exist. To detect all types, groups, and subtypes of HIV by serological methods, a mixture of antigens derived from different viral strains representing different HIV types and subtypes is needed. However, due to the competition and dilution effect, mixing multiple antigens may reduce the amount of individual antigen bound to the solid phase and lead to a reduction in assay sensitivity.

It is known that MAPs, which contain multiple branches of an oligopeptide sequence, are more antigenic than the corresponding single chain linear peptides. The MAPs encompassed by this technology contain multiple branches of oligopeptides of different sequences, derived from HIV–1 group M, N, O, and HIV–2. Thus, depending on the peptide sequences incorporated, a single MAP can be used to detect HIV–1 group M alone, HIV–2 alone, or to simultaneously detect HIV–1 groups M, N, O, and HIV–2 with high sensitivity and specificity.

Potential Commercial Applications:

- Diagnostic test for HIV–1 and/or HIV–2 infection
- Blood and plasma donation screening
- HIV/AIDS surveillance and monitoring programs

Competitive Advantages:

- Lateral flow assays for HIV detection and discrimination
- On-site, point-of-care testing and diagnosis
- Easily formulated as an ELISA kit for commercial or research applications
- Technology can be used to develop a rapid, low-cost method of determining HIV status for home-use or low-resource settings

Development Stage: In vitro data available

Inventor: Chou-Pong Pau (CDC)

Publications:

1. Granade TC, et al. Rapid detection and differentiation of antibodies to HIV–1 and HIV–2 using multivalent antigens and magnetic immunochromatography testing. Clin Vaccine Immunol. 2010 Jun;17(6):1034–9. [PMID 20410326]
2. Pau C, et al. Chimeric multiple antigenic peptides for the simultaneously detection of specific antibodies to HTV–1 groups M, N, O, and HIV–2. J Immunol Methods. 2007 Jan 10;318(1–2):59–64. [PMID 17169369]

3. Kim P and Pau CP. Comparing tandem repeats and multiple antigenic peptides as the antigens to detect antibodies by enzyme immunoassay. J Immunol Methods. 2001 Nov 1;257(1–2):51–4. [PMID 11687238]

Intellectual Property: HHS Reference No. E–604–2013/0—Research Tool. Patent protection is not being pursued for this technology.

Related Technologies:

- HHS Reference No. E–052–2013/0
- HHS Reference No. E–053–2013/0
- HHS Reference No. E–173–2013/0
- HHS Reference No. E–232–2013/0
- HHS Reference No. E–259–2013/0
- HHS Reference No. E–294–2013/0
- HHS Reference No. E–357–2013/0
- HHS Reference No. E–358–2013/0
- HHS Reference No. E–522–2013/0
- HHS Reference No. E–555–2013/0
- HHS Reference No. E–638–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*.

Recombinant, Multivalent Malarial Antigens for Development of Therapeutics, Diagnostics and/or a Multistage Vaccine for *Plasmodium falciparum*

Description of Technology: This CDC-generated technology relates to a recombinant, multivalent and multi-stage malaria vaccine and, more specifically, to antigenic proteins useful for preventing or treating *Plasmodium falciparum* malarial infections. Malaria continues to be a public health problem throughout the world and *P. falciparum* is often identified as the cause of the most severe forms of the disease. Ideally, an effective malaria vaccine would contain a combination of key antigens/epitopes from different stages of the pathogen's complex life-cycle. This approach to vaccination would likely result in the induction of both humoral and cellular immunity for optimal efficacy and a broad scope of protection.

This technology entails a multi-stage vaccine against malaria that is effective in inhibiting reproductive growth of the parasite within a human or animal after initial infection. Further, the technology includes antibodies against a recombinant protein containing antigenic epitopes to varied life-cycle stages of a malarial *Plasmodium* species. These antigens and antibodies may be useful as research tools or diagnostic reagents for the detection and diagnosis of *P. falciparum* at a number of different life-cycle stages within a biological sample.

Potential Commercial Applications:

- Malaria vaccine development
- Useful for malaria vaccination and surveillance programs
- Military, foreign service applications
- Mitigation of zoonotic disease transmission and livestock morbidity, especially within South Asia

Competitive Advantages:

- Single vaccine confers immunity against the malarial parasite at multiple life cycle stages, increasing the chances of neutralizing sustained infection
- In vivo animal studies demonstrate vaccine efficacy

Development Stage:

- In vitro data available
- In vivo data available (animal)

Inventors: Altaf A. Lal (CDC), Ya-Ping Shi (CDC), Seyed P. Hasnain (National Institute of Immunology—India)

Publication: Shi YP. Immunogenicity and in vitro protective efficacy of a recombinant multistage Plasmodium falciparum candidate vaccine. Proc Natl Acad Sci U S A. 1999 Feb 16;96(4):1615–20. [PMID: 9990073]

Intellectual Property: HHS Reference No. E–451–2013/0—

- US Patent No. 6,828,416 issued 07 Dec 2004
- Various international patent applications pending or issued

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*.

Air Quality Assurance: A Monitor for Continuous, Simultaneous Analysis of Atmospheric or Aerosolized Particulate Mixtures

Description of Technology: This technology pertains to monitors for measuring the mass concentration of ambient particulate matter in an atmosphere containing both larger/coarser (e.g., respirable dust) and smaller/finer (sub-micrometer particles such as diesel particulate matter—DPM) particulate mixtures. The monitoring device can be configured for operation with a controller unit adapted to ionization sensor and/or light-scattering modules. The controller translates the sensor output signal into a quantifiable value, determining mass concentration of particulate matter within the ionization chamber. For example, practical applications of this monitor/analysis technology would easily extend to use in mining operations (where both DPM and respirable dust exist in abundance), industrial manufacturing facilities, and anywhere that frequent or extended exposure to fuel-combustion exhaust or airborne pollution is a concern. Further, by virtue of its ability to distinguish ''fire smoke'' from other aerosols that may be present, the device also has significant potential for use in early-warning fire detection.

Potential Commercial Applications:

- Airborne particle monitor for mining and industrial manufacturing operations
- Addressing emissions control standards and regulations
- Early-warning fire detection in locations where traditional smoke-detector use is impractical

Competitive Advantages:

- Inexpensive and simple to implement
- Device provides continuous, simultaneous, and independent measurement of both respirable dust and diesel particulate matter (DPM) mass concentrations
- Previous particulate counting technologies are both expensive and cannot provide accurate quantification of coarse/fine aerosol mixtures, concentrations

Development Stage:

- In situ data available (on-site)
  - Prototype

Inventors: Charles D. Litton, Jon C. Volkwein, William H. Schiffbauer (all of CDC)

Intellectual Property: HHS Reference No. E–240–2013/0—US Patent No. 6,965,240 issued 27 Mar 2003

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*.

A Targeted Therapy for the Activated B Cell-Like Subtype of Diffuse Large B Cell Lymphoma

Description of Technology: NIH scientists have developed novel peptides that specifically target the activated B cell like (ABC) subtype of diffuse large B cell lymphoma (DLBCL), which is the least curable form of this aggressive lymphoma.

ABC DLBCL is characterized by constitutive NF-kB pathway activation, which depends on the binding of two protein molecules, RNF31 and RBCK1. These cell-permeable peptides compete against endogenous RNF31, therefore inhibit the NF-kB induction pathway and kill the malignant cells.

This technology would be a potential targeted therapy for ABC DLBCL, and could be combined with radiation or chemotherapy for ABC DLBCL or other cancers. Additionally, these peptides could also be applied to treat rheumatoid arthritis, chronic autoinflammation, systemic lupus erythematosus, Crohn's inflammatory bowel disease, or psoriasis.

Potential Commercial Applications:

- Targeted therapies for ABC DLBCL.
- Combination cytotoxic chemotherapies for ABC DLBCL.
- Treatment for other cancers or autoimmune/inflammatory diseases that depend upon the function of RNF31 and RBCK1 combination.

Competitive Advantages:

- Novel composition of inhibitors for ABC DLBCL.
- Novel targeted drug to ABC DLBCL.
- Effective therapies targeting at NF-kB pathway.

Development Stage:

- Early-stage
- In vitro data available

Inventors: Louis M. Staudt, Yibin Yang, Federico Bernal (all of NCI)

Publication: Yang Y, et al. Essential Role of the Linear Ubiquitin Chain Assembly Complex in Lymphoma Revealed by Rare Germline Polymorphisms. Cancer Discov. 2014 Feb 3 (Epub ahead of print). [PMID 24491438]

Intellectual Property: HHS Reference No. E–035–2013/0—US Provisional Application No. 61/789,064 filed 15 March 2013

Licensing Contact: Sabarni Chatterjee, Ph.D., MBA; 301–435–5587; *chatterjeesa@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize the inhibitors of the LUBAC ubiquitin ligase for the therapy of lymphoma and autoimmune diseases. For collaboration

opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov*.

Mutation Based Control Plasmids for Standardizing Cancer Genomic Diagnostic Assays

Description of Technology: To date, there are no widely accepted standards and controls for multi-analyte based diagnostic assays. The ability to compare the accuracy of different types of assay results and to utilize in process controls is hampered by the lack of availability of such standards/controls. Variations resulting from different platforms, methodologies, and bioinformatics analyses therefore create error in the interpretation of assay reports and different results may occur when testing for the presence or absence of specific gene mutations or biomarkers.

This technology includes a library of plasmids that can be used to test for and control for accuracy, sensitivity, and specificity and reproducibility within an assay and across different assays or laboratories and platforms. These standards consist of normal human reference genomic DNA that have engineered to contain known sequence variations representing somatic mutations of interest to cancer management. The plasmids contain approximately 1000 bases of human sequence. Each inserted sequence carries a specific mutation of interest within the appropriate genomic locus and a mutation adjacent alien barcode. The plasmids can be mixed with non-mutant genomes to create exact variant to normal allele frequencies for limit of detection studies. The alien barcode unequivocally indicates the detected mutation is from the plasmid spiked into a test human specimen. If needed for certain applications the barcode can be left out of design.

Potential Commercial Applications:

- Quantified standards for scientists to compare, optimize and/or validate assays
- Assess specificity, sensitivity, accuracy and limit detection of artifacts during assay development
- Internal in process run controls to monitor assay performance

Competitive Advantages:

- Reference materials for comparing results of assays performed by different platforms, operators, times, and sites
- Ability to uniquely distinguish plasmid control mutations spiked directly into unknown samples by alien barcode
- No limit in the number and types of mutation plasmids introduced into the test human specimen, unlike engineered cell line genome based mutation controls
- Easy design and manufacture process

Development Stage: In vitro data available

Inventors: Chih-Jian Lih, Paul Williams, David Sims, Michele Mehaffey (all of NCI)

Publications: Manuscripts in preparation.

Intellectual Property: HHS Reference No. E–265–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Jennifer Wong, M.S.; 301–435–4633; *wongje@mail.nih.gov*

Collaborative Research Opportunity: The National Cancer Institute, Cancer Diagnosis Program, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Mutation Based Control Plasmids for Standardizing Cancer Genomic Diagnostic Assays. For collaboration opportunities, please contact John Hewes, Ph.D. at *john.hewes@nih.gov*.

Use of Soluble CD27 as Potential Immunotherapy and a Diagnostic and Prognostic Serum Biomarker for Solid Tumors

Description of Technology: The present invention discloses methods for diagnosing a patient with a solid tumor or a predisposition to developing a solid tumor, a patient's suitability for immunotherapy and monitor disease progression in a patient undergoing treatment for a solid tumor, such as a prostate or colorectal tumor, by measuring the amount of soluble CD27 (sCD27) present in a serum sample obtained from a patient and detecting the amount of sCD27present in the serum sample. Additionally, sCD27 can also be developed an immunotherapeutic product. Such product will constitute the administration of a therapeutically effective amount of sCD27 or a functional 15 fragment thereof that is capable of stimulating a patient's immune system.

CD27 is a tumor necrosis factor receptor. A soluble form of CD27 (sCD27), is a 32-kD protein identical to the extracellular domain of membrane-bound CD27. CD27's role in T cell activation has been previously demonstrated.

Potential Commercial Applications:

- Serum biomarker for diagnosis, prognosis and therapeutic response.
- Can potentially be developed into an immunotherapeutic product.

Competitive Advantages:

- Potentially can be used with clinically proven platforms.
- Can be developed into a minimally invasive diagnostic test using patient's blood sample.

Development Stage:

- Early-stage
- In vitro data available

Inventors: Jeffrey Schlom and Jianping Huang (NCI)

Publication: Huang J, et al. Soluble CD27-pool in humans may contribute to T cell activation and tumor immunity. J Immunol. 2013 Jun 15;190(12):6250–8. [PMID 23677477]

Intellectual Property: HHS Reference No. E–005–2011/0—US Patent Application No. 61/824,898 filed 17 May 2013

Licensing Contact: Sabarni Chatterjee, Ph.D., MBA; 301–435–5587; *chatterjeesa@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Metabolism, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize a non-invasive assay for the detection of colorectal cancer. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov*.

The Use of alpha-4 beta-7 integrin Inhibitors To Inhibit HIV Transmission and Infection

Description of Technology: This invention involves the use of inhibitors of alpha-4 beta-7 (α4β7) integrin to inhibit HIV transmission/infection, as a prophylactic to inhibit onset of the acute stage of HIV infection or to treat HIV infection. The α4β7 integrin inhibitors were previously developed for use in other diseases, such as multiple sclerosis or inflammatory bowel disease.

α4β7 integrin is a multifaceted target for HIV infection and recent studies indicate that it is important for establishing HIV infection through multiple paths. Studies indicate that: (1) CD4 T-cells present in vaginal and anal mucosa have high levels of α4β7 integrin, making CD4 T-cells permissive to HIV infection; (2) α4β7 integrin is important for cell to cell transmission of HIV; (3) α4β7 integrin is used to dysregulate the host humoral response to HIV; and (4) HIV acts on a4b7 integrin through an epitope in V2 loop of GP120, identified as important for HIV vaccine protection. Additionally, primate studies indicate that α4β7 integrin inhibition of HIV infection preserves gut-associated lymphoid tissue (GALT) generally destroyed during the acute phase of HIV infection.

Potential Commercial Applications: Prevention and treatment of HIV infection

Competitive Advantages:

- α4β7 integrin is a multifaceted target for HIV infection
- Previously developed α4β7 integrin inhibitors can be used for a new purpose

Development Stage:

- Pre-clinical
- In vitro data available
- In vivo data available (animal)

Inventors: James Arthos, Claudia Cicala, Anthony S. Fauci, Diana Goode (all of NIAID)

Publications:

1. Martinelli E, et al. The frequency of $[alpha]_4[beta]_7^{high}$ memory $CD4^+$ T cells correlates with susceptibility to rectal simian immunodeficiency virus infection. J Acquir Immune Defic Syndr. 2013 Dec 1;64(4):325–31. [PMID 23797688]
2. Nawaz F, et.al. The genotype of early-transmitting HIV gp120s promotes $\alpha_4\beta_7$-reactivity, revealing $\alpha_4\beta_7^+/CD4^+$ T cells as key targets in mucosal transmission. PLoS Pathog. 2011 Feb;7(2):e1001301. [PMID 21383973]
3. Cicala C, et al. The integrin $\alpha_4\beta_7$ forms a complex with cell-surface CD4 and defines a T-cell subset that is highly susceptible to infection by HIV–1. Proc Natl Acad Sci U S A. 2009 Dec 8;106(49):20877–82. [PMID 19933330]
4. Arthos J, et al. HIV–1 envelope protein binds to and signals through integrin $\alpha_4\beta_7$, the gut mucosal homing receptor for peripheral T cells. Nat Immunol. 2008 Mar;9(3):301–9. [PMID 18264102]

Intellectual Property:

- HHS Reference No. E–055–2007/0—US Provisional Patent Application No. 60/873,884 filed 07 Dec 2006
- HHS Reference No. E–055–2007/1—US Provisional Patent Application No. 60/920,880 filed 30 Mar 2007

- HHS Reference No. E–055–2007/2—US Provisional Patent Application No. 60/957,140 filed 21 Aug 2007
- HHS Reference No. E–055–2007/3—PCT Patent Application No. PCT/US2007/086663 filed 06 Dec 2007, which published as WO 2008/140602 on 20 Nov 2008, and corresponding European Application No. 07874349.9; US Patent Application No. 12/518,035 filed 05 Jun 2009

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301–435–4507; *thalhamc@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize alpha-4 beta-7 integrin inhibitors. For collaboration opportunities, please contact Bill Ronnenberg, JD/MIP, MS at 301–451–3522 or *wr78k@nih.gov*.

Beta-Amyloid and Tau Fibril Positron Emissions Tomography (PET) Imaging Agents

Description of Technology: The invention relates to two novel classes of compounds useful as radioligands for in vivo imaging of beta-amyloid fibrils, peptides and plaques in humans. Beta-amyloid peptide deposition in the brain is a pathological feature of Alzheimer's disease (AD). Early detection of beta-amyloid load in patients with suspected AD is vital to initiating early treatment, which can improve cognitive function and quality of life for many patients. The invention describes novel derivatives of imidazopyridinylbenzeneamine (IMPY) and benzothizolylbenzeneamine (BTA), which demonstrate high in vitro binding affinity to human beta-amyloid. The difference between existing IMPY compounds and the novel derivatives is the substitution of an aryl halide with an aryl thioether group and replacement of a sulfur group of the pyridine ring with a nitrogen group. The new classes of compounds have the potential of providing improved amyloid imaging agents for Positron Emission Tomography (PET) with higher specificity for amyloid, low background noise, better entry into the brain and improved labeling efficiency.

Potential Commercial Applications:

- Alzheimer's disease
- Alzheimer's disease diagnostics
- Alzheimer's disease early detection

Competitive Advantages: Specificity

Development Stage: In vitro data available

Inventors: Lisheng Cai, Victor W. Pike, Robert B. Innis (all of NIMH)

Publications:

1. Nichols L, et al. Imaging and in vivo quantitation of beta-amyloid: an exemplary biomarker for Alzheimer's disease? Biol Psychiatry. 2006 May 15;59(10):940–7. [PMID 16487944]
2. Toyama H, et al. PET imaging of brain with the beta-amyloid probe, [11C]6–OH–BTA–1, in a transgenic mouse model of Alzheimer's disease. Eur J Nucl Med Mol Imaging. 2005 May;32(5):593–600. [PMID 15791432]
3. Cai L, et al. Synthesis and evaluation of two 18F-labeled 6-iodo-2-(4'-N,N-dimethylamino)phenylimidazo[1,2-a]pyridine derivatives as prospective radioligands for beta-amyloid in Alzheimer's disease. J Med Chem. 2004 Apr 22;47(9):2208–18. [PMID 15084119]

Intellectual Property: HHS Reference No. E–156–2006/0—

- US Patent Application 12/293,940 filed September 17, 2008 (allowed)
- European Patent Application 07797254.5 filed April 19, 2007 (pending)

Related Technologies:

- HHS Reference No. E–136–2008/0—''Beta Amyloid PET Imaging Agents Based On 2-(4-phenyl)benzo[d]thiazole Derivatives''
- HHS Reference Nos. E–225–2011/0 and/1—''Beta-amyloid PET Imaging Agents Based On Benzothiazoles (BTA) Derivatives''

Licensing Contact: Michael Shmilovich, Esq., CLP; 301–435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Mental Health is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Alzheimer's disease diagnostics. For collaboration opportunities, please contact Suzanne Winfield, Ph.D. at 301–402–4324.

Dated: February 27, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–04771 Filed 3–4–14; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communication Disorders Special Emphasis Panel; Neural/Vestibular Prosthesis Review.

Date: March 21, 2014.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; VSL Translational Applications Review.

Date: March 27, 2014.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Health/NIDCD, 6001 Executive Blvd.—Room 8343, Bethesda, MD 20892, (301) 496–8683, *livingsc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 27, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–04767 Filed 3–4–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed 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 General Medical Sciences Special Emphasis Panel; Review of K99 Grant Applications.

Date: March 25, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert Horowits, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18I, Bethesda, MD 20892, 301–594–6904, *horowitr@mail.nih.gov*.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Research Grants.

Date: March 25, 2014.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.12A, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mona R. Trempe, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12A, Bethesda, MD 20892, 301–594–3998, *trempemo@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 27, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–04774 Filed 3–4–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Support of NIGMS Program Project Grants (P01).

Date: March 26, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.18A, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18A, Bethesda, MD 20892, 301–594–2704, *newmanla2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 27, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–04773 Filed 3–4–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: April 8, 2014.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: The Committee serves to advise and make recommendations to the Director, Office of Research on Women's Health (ORWH) on a broad range of topics including, the current scope of research on women's health and the influence of sex and gender on human health, efforts to understand the issues related to women in biomedical careers and their needs, and the current status of inclusion of women in clinical trials research.

Place: National Institutes of Health, Building 31, Room 6C, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Susan E Maier, Ph.D., NIH/OD, 6707 Democracy Blvd., Room 400, Bethesda, MD 20852, 301–435–1573, *maiers@mail.nih.gov*.

Any interested person may file written comments for the public record by registering and submitting their comments at *http://palladianpartners.cvent.com/events/37th-meeting-of-the-nih-advisory-committee-on-research-on-women-s-health/event-summary-072e6bfa6a814aaca82491361dcd7afd.aspx.* Written comments for the public record must not exceed two single-spaced, typed pages, using a 12-point typeface and 1 inch margins; it is preferred that the document be prepared in the MS Word® format. Only testimony submitted to this Web site and received in advance of the meeting are part of the official meeting record.

Supplementary Information: A draft agenda for this meeting is posted at *http://orwh.od.nih.gov/about/acrwh/index.asp.* The meeting will be live-video streamed at *http://videocast.nih.gov/.*

Individuals who plan to attend the meeting in person should register at the following link *http://palladianpartners.cvent.com/ACRWHSpring2014.* Members of the media will also need to register. In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 27, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–04766 Filed 3–4–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Discovery and Development of Therapeutics Study Section.
Date: March 21, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW, Washington, DC 20037.
Contact Person: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–009: Secondary Dataset Analyses in Heart, Lung, and Blood Diseases and Sleep Disorders.
Date: March 25, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Julia Krushkal, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, 301–435–1782, *krushkalj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Endocrinology, Pregnancy and Reproduction.
Date: March 27, 2014.
Time: 1:00 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: Reed A Graves, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology Topics I.
Date: March 27, 2014.
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: Michael H Chaitin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Ethical Issues in Research on HIV/AIDS and its Co-Morbidities.
Date: March 31, 2014.
Time: 8:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Karin F Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3144, MSC 7770, Bethesda, MD 20892, (301) 254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular and Cellular Neuroscience.
Date: March 31, 2014.
Time: 1:00 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: Toby Behar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Channels, Transporters and Addiction.
Date: April 1, 2014.
Time: 1:00 p.m. to 3:30 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: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Center for Biomolecular NMR Data Processing and Analysis.
Date: April 1–3, 2014.
Time: 7:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Homewood Suites, 2 Farm Glen Blvd., Farmington, CT 06032.
Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.
Date: April 2–3, 2014.
Time: 10:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–101 High End Shared Instrumentation: NMR and X-ray.
Date: April 2–3, 2014.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.
Date: April 3–4, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Solamar San Diego, 435 6th Avenue, San Diego, CA 92101.
Contact Person: Michael L Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.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: February 27, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–04775 Filed 3–4–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed 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 General Medical Sciences Special Emphasis Panel; Chemical Libraries Legacy Resource Review.

Date: April 1, 2014.

Time: 1:00 p.m. to3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.18K, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18K, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Grant Applications.

Date: April 1, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.18C, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 27, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–04772 Filed 3–4–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2007–0008]

National Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) National Advisory Council (NAC) will meet in person on March 19, 2014 in Philadelphia, PA. The meeting will be open to the public.

DATES: The NAC will meet on Wednesday, March 19, 2014, from 8:30 a.m. to 5:00 p.m. Eastern Daylight Time (EDT). Please note that the meeting may close early if the NAC has completed its business.

ADDRESSES: The meeting will be held at the FEMA Region III Office located at 615 Chestnut Street, Philadelphia, PA 19106. All visitors to the FEMA Region III Office will have to register with FEMA to be admitted to the building. Photo identification is required to access the building. Please provide your name, telephone number, email address, title, and organization by close of business on March 12, 2014, to the contact person listed in **FOR FURTHER INFORMATION CONTACT** below.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT:** below as soon as possible.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the NAC (see ''**AGENDA**''). Written comments must be submitted and received by March 12, 2014, identified by Docket ID FEMA–2007–0008, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FEMA-NAC@fema.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (540) 504–2331.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words ''Federal Emergency Management Agency'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received by the NAC, go to *http://www.regulations.gov,* and search for the Docket ID listed above.

A public comment period will be held during the meeting from 3:15 p.m. to 3:45 p.m. EDT, and speakers are requested to limit their comments to 3 minutes. Comments should be specifically related to and addressed to the NAC. Contact the individual listed below to register as a speaker by March 12, 2014. Please note that the public comment period may end before the time indicated, following the last call for comments.

FOR FURTHER INFORMATION CONTACT: Alexandra Woodruff, Alternate Designated Federal Officer, Office of the National Advisory Council, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3100, telephone (202) 646–2700, fax (540) 504–2331, and email *FEMA-NAC@fema.dhs.gov.* The NAC Web site is: *http://www.fema.gov/national-advisory-council.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

The NAC advises the FEMA Administrator on all aspects of emergency management. The NAC incorporates State, local, and tribal government, and private sector input in the development and revision of FEMA plans and strategies.

Agenda: The NAC will engage in open discussion with the FEMA Administrator. The NAC will receive report outs from its subcommittees on the following topics: Progress on issues related to Federal Insurance and Mitigation, Preparedness and Protection, and Response and Recovery. The NAC will review the information presented on each topic, deliberate on any recommendations presented in the subcommittees' reports, and, if appropriate, formulate recommendations for FEMA's consideration.

The NAC will also receive briefings from FEMA Executive Staff on the following topics:

- America's PrepareAthon;
- the FEMA Strategic Plan;
- Disability Inclusive Emergency Management;
- Implementation of the National Preparedness System;
- the Emergency Management Institute;

• the National Preparedness Grant Program; and

• FEMA's Climate Change Adaptation and Resilience Initiative.

The full agenda and any related committee documents will be posted on the NAC Web site at *http://www.fema.gov/national-advisory-council.*

Dated: February 26, 2014.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–04861 Filed 3–4–14; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5756–N–06]

60-Day Notice of Proposed Information Collection: Recertification of Family Income & Composition Section 235(b) & Statistical Report Section 235(b), (i) and (j)

AGENCY: Office of the Assistant Secretary for Housing, Office of Single Family Asset Management, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* May 5, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ivery W. Himes, Director, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Ivery W. Himes at *Ivery.W.Himes@hud.gov* or telephone 202–708–1672. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Himes.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Recertification of Family Income & Composition Section 235(b) & Statistical Report Section 235(b), (i) and (j).

OMB Approval Number: 2502–0082.

Type of Request: Extension of currently approved collection.

Form Number: HUD–93101 Recertification of Family Income and Composition, Section 235(b) and Statistical Report Section 235(b), (i), and (j).

Description of the need for the information and proposed use: This collection of information consists of recertification information submitted by homeowners to mortgagees to determine their continued eligibility for assistance and to determine the amount of assistance a homeowner is to receive. The information collected is also used by mortgagees to report statistical and general program data to HUD.

Respondents (i.e. affected public): Households.

Estimated Number of Respondents: 3500.

Estimated Number of Responses: 7000.

Frequency of Response: Once per Loan.

Average Hours per Response: 15 minutes to one hour.

Total Estimated Burdens: 4935.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: February 27, 2014.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2014–04908 Filed 3–4–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–26]

30-Day Notice of Proposed Information Collection: Restrictions on Assistance to Noncitizens

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 4, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has

submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 11, 2013.

A. Overview of Information Collection

Title of Information Collection: Restrictions on Assistance to Noncitizens.

OMB Approval Number: 2501–0014.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–9886, HUD–9886–ARA, HUD–9886–CAM, HUD–9886–CHI, HUD–9886–CRE, HUD–9886–FRE, HUD–9886–HMO, HUD–9886–KOR, HUD–9886–RUS, HUD–9886–SPA, HUD–9886–VIE.

Description of the need for the information and proposed use: HUD is prohibited from making financial assistance available to other than citizens or persons of eligible immigration status. This is a request for an extension of the current approval for HUD to require a declaration of citizenship or eligible immigration status from individuals seeking certain housing assistance.

Respondents (i.e. affected public): Individuals or households, State, Local, or Tribal Government.

Reporting burden	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
New admissions	4,055	864,434		0.16		138,309
Recertifications	4,055	29,648		0.08		2,372

Total Estimated Burden Hours: 140,681.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Date: February 27, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–04904 Filed 3–4–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5732–N–01]

Section 184 Indian Housing Loan Guarantee Program Increase in the Loan Guarantee Fee

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The Section 184 Indian Housing Loan Guarantee program (Section 184 program) provides access to sources of private financing for Indian families, Indian housing authorities, and Indian tribes that otherwise could not acquire housing financing because of the unique legal status of Indian land, by guaranteeing loans to eligible persons and entities. Over the last 5 years, the Section 184 program has doubled the number of loans and eligible families being assisted by the program. For HUD to continue to meet the increasing demand for participation in this program, HUD is exercising its new authority to increase the loan guarantee fee to 1.5 percent of the principal obligation from the current rate of 1 percent.

DATES: *Effective Date:* April 4, 2014.

FOR FURTHER INFORMATION CONTACT: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4126, Washington, DC 20410; telephone number 202–401–7914 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 184 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), as amended by the Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104–330, approved October 26, 1996), established the Section 184 program to provide access to sources of private financing to Indian families, Indian housing authorities, and Indian tribes that otherwise could not acquire housing financing because of the unique legal status of Indian land. Because title to trust or restricted land is inalienable, title cannot be conveyed to eligible Section 184 program borrowers. As a consequence, financial institutions cannot utilize the land as security in mortgage lending transactions. The Section 184 program addresses obstacles to mortgage financing on trust land and in other Indian and Alaska Native areas by giving HUD the authority to guarantee loans to eligible persons and entities to construct, acquire, refinance, or rehabilitate one-to-four family dwellings in these areas.

The Section 184 Loan Guarantee Fund (the Fund) receives annual appropriations to cover the cost of the program. Guarantee fees and any other amounts, claims, notes, mortgages, contracts, and property acquired by the Secretary under the Section 184 program reduce the amount of appropriations needed to support the program, and together with appropriations are used to fulfill obligations of the Secretary with respect to the loans guaranteed under this section.

In recent years, rapidly growing demand has increased the need for subsidy appropriations to support new loan guarantees. HUD issued loan guarantee commitments for $307 million in 2008, $508 million in 2009,

$552 million in 2010, $531 million in 2011, $797 million in 2012, and $648 million in 2013.[1] Additionally, expenses have increased for acquisitions, insurance, and other program expenses, and HUD expects higher losses now that the Fund has guaranteed over $3.5 billion in current loans. Since section 184(d) of the Housing and Community Development Act of 1992 limited the guarantee fee to a maximum of 1 percent of the principal obligation, HUD's guarantee fee has been set at 1 percent. (See 24 CFR 1005.109.) The 2013 Consolidated and Further Continuing Appropriations Act (Pub. L. 113–6, approved March 26, 2013) amended section 184(d) of the Housing and Community Development Act of 1992, by authorizing the Secretary to increase the fee for the guarantee of loans up to 3 percent of the principal obligation of the loan and to establish the amount of the fee by publishing a notice in the **Federal Register**. Separate from this notice and published elsewhere in today's **Federal Register**, HUD updates its existing regulations to reflect the new authority.

II. New Loan Guarantee Fee

To meet the growing demand for participation in the Section 184 program, HUD is increasing the loan guarantee fee paid by borrowers to 1.5 percent of the principal obligation. In the absence of a loan guarantee fee increase, if the Section 184 program received appropriations of $6 million for Fiscal Year (FY) 2014, that funding would support only about $650 million in new loan guarantee commitments. Considering the increasing demand for the program, this may force HUD to limit access to the program for some otherwise eligible program participants. In addition, if HUD were to limit access to the loan guarantee program, HUD predicts that some lenders currently participating in the Section 184 program may choose to no longer partner with HUD to provide mortgage lending through the Section 184 program. Without those lenders, the Section 184 program would be unable to meet the demand for mortgage lending on trust land and in Indian and Alaska Native areas and tribal lands, potentially causing a further reduction in program activity.

By raising the loan guarantee fee paid by borrowers to 1.5 percent of the principal obligation, the credit subsidy rate will go down, and HUD expects the program will be able to guarantee the volume of loans expected in FY 2014. In addition, HUD could resume refinancing off of trust lands in FY 2014, which was temporarily halted for all of FY 2013. Raising the loan guarantee fee paid by borrowers to 1.5 percent of the principal obligation would cost the average borrower (who has a $175,000 mortgage) an extra $4 a month on the borrower's monthly payment. Even with these additional costs to borrowers, the Section 184 program will still be affordable. While paying an increased fee may be a hardship for some borrowers, HUD does not believe that the extra cost is cost prohibitive and believes it will have a limited impact on the demand for the program. However, the increased fee will allow HUD to continue to meet the demand for new mortgage lending transactions so that more Indian and Alaska Native families have the opportunity for homeownership.[2]

This notice places the new loan guarantee fee of 1.5 percent of the principal obligation of the loan in effect for all new case numbers assigned on or after April 4, 2014.

III. Tribal Consultation

HUD's policy is to consult with Indian tribes early in the process on matters that have tribal implications. Accordingly, on September 6, 2013, HUD sent letters to all tribal leaders participating in the Section 184 program, informing them of the nature of the forthcoming notice and soliciting comments. A summary of comments received and responses can be found on HUD's Web site at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/ih/homeownership/184.*

IV. Environmental Impact

This notice involves the establishment of a rate or cost determination that does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (U.S.C. 4321).

Dated: February 21, 2014.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2014–04513 Filed 3–4–14; 8:45 am]

BILLING CODE 4210–67–P

[1] The volume in 2013 does not represent program demand because during FY 2013, the program was shut down for 8 weeks and did not guarantee refinances, which typically accounts for 30 percent of the Section 184 program's business.

[2] In its Congressional Justifications for HUD's FY 2014 budget, HUD announced that it would pursue a fee increase to 1.5 percent in the Section 184 program. Please see page M–5 of HUD's Congressional Justification for the ''Indian Housing Loan Guarantee Fund (Section 184)'' at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/reports/2014/main_toc.*

DEPARTMENT OF THE INTERIOR

[MMAA104000]

Outer Continental Shelf (OCS) Scientific Committee—Notice of Renewal

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Renewal.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is renewing the OCS Scientific Committee.

The OCS Scientific Committee provides advice on the feasibility, appropriateness, and scientific value of the OCS Environmental Studies Program to the Secretary of the Interior through the Director of the Bureau of Ocean Energy Management. The Committee reviews the relevance of the research and data being produced to meet BOEM's scientific information needs for decision making and may recommend changes in scope, direction, and emphasis.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Clark, Bureau of Ocean Energy Management, Office of Environmental Program, Environmental Sciences Division, Herndon, Virginia 20170–4817, telephone, (703) 787–1716.

Certification

I hereby certify that the renewal of the OCS Scientific Committee is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et. seq.*

Dated: February 25, 2014.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2014–04883 Filed 3–4–14; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R2–ES–2013–0128]; [FXES11120200000F2–145–FF02ENEH00]

Notice of Intent To Prepare an Environmental Assessment for the Barton Springs/Edwards Aquifer Conservation District for Proposed Incidental Take Permit Addressing Take of Two Federally Listed Species in Central Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent, announcement of public scoping period, and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to prepare a draft Environmental Assessment (EA) to evaluate the impacts of, and alternatives to, the proposed issuance of an incidental take permit to the Barton Springs/Edwards Aquifer Conservation District (District). The permit, issued under the Endangered Species Act, as amended (Act), would allow for potential take of two federally listed species associated with the ongoing management and withdrawal of groundwater from the Barton Springs segment of the Edwards Aquifer (Aquifer) in Central Texas.

DATES: *Comments:* We will accept comments received or postmarked on or before April 4, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered.

Scoping Meeting: A public scoping meeting will be held within the District's jurisdictional area on a date to be announced. The notice of the exact meeting date, times, and location will be published at least 2 weeks before the event in the *Austin-American Statesman* newspaper and on the Service's Austin Ecological Services Office Web site, *http://www.fws.gov/southwest/es/AustinTexas/.*

ADDRESSES: You may submit written comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2013–0128, which is the docket number for this notice. On the left side of the screen, under the Document Type heading, click on the Notices link to locate this document and submit a comment.
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0128; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

Please note that your comments are in regard to the proposed Barton Springs/Edwards Aquifer Conservation District Habitat Conservation Plan.

We request that you send comments 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 the Public Availability of Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758–4460; telephone 512/490–0057; facsimile 512/490–0974; or email *Adam_Zerrenner@fws.gov.*

SUPPLEMENTARY INFORMATION: The District proposes to develop a habitat conservation plan (HCP) and apply for an incidental take permit. The District HCP will include measures necessary to minimize and mitigate the impacts of potential taking of the endangered Barton Springs salamander (*Eurycea sosorum*) and Austin blind salamander (*Eurycea waterlooensis*) resulting from loss or degradation of habitats upon which they depend due to actions associated with the management and use of the Aquifer.

The Service seeks information from stakeholders and the public necessary to determine impacts on the human environment and alternative actions to be considered in the EA that documents our decision regarding the potential issuance of an incidental take permit and implementation of the supporting draft HCP.

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) prohibits ''taking'' of fish and wildlife species listed as endangered under section 4 of the Act. Under the Act, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. The term ''harm'' is defined in the regulations as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in the regulations as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3). However, the Service may, under specified circumstances, issue permits that allow take of federally listed fish and wildlife, provided that the take occurs incidental to, but is not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered species are at 50 CFR 17.22.

Section 10(a)(1)(B) of the Act authorizes issuance of such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met: (1) The taking will be incidental; (2) The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) The applicant will develop a draft habitat conservation plan and ensure that adequate funding for the plan will be provided; (4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) The applicant will carry out any other measures that we may require as being necessary or appropriate for the purposes of implementing the habitat conservation plan.

The District is a political subdivision of the State of Texas, with a legislative mandate to conserve, preserve, and protect the groundwater resources, including springflows, of the aquifers within its jurisdictional area. The District regulates groundwater within its jurisdiction by adopting, implementing, and enforcing regulations and management programs that address water demand, springflow protection, aquifer recharge, and other management strategies.

The purpose of issuing the proposed permit is to allow for the ongoing use of the waters of the Aquifer by end-users under the management authority of the District while conserving listed species and the ecosystems upon which they depend. Adoption of a multispecies habitat conservation approach, rather than a species-by-species or project-by-project approach, will reduce the costs of implementing minimization and mitigation measures for the covered species; and eliminate cost and time-consuming efforts associated with processing individual incidental take permits for each user of the Aquifer. In addition, the multispecies habitat conservation approach provides a program including avoidance,

minimization, and mitigation for each species that is coordinated on a landscape level that provides increased benefits to the covered species.

Scoping Period and Meeting

The purpose of scoping is to provide an early and open process to determine concerns to be addressed and to identify potentially significant issues related to the proposed action. The publication of this notice initiates a 30-day scoping period, during which stakeholders and the public are encouraged to provide input and recommendations to the Service. Specifically, the Service seeks to identify people or organizations interested in the proposed action, any potentially significant issues to be analyzed, gaps in data or information, and alternatives to the proposed action that should be considered.

The Service will host an open house and public scoping meeting that will provide an opportunity for stakeholders and the public to provide comments and information on the scope of issues and alternatives to be considered. Comments can also be submitted electronically or at the address above at any time during the scoping period.

The U.S. Fish and Wildlife Service is committed to providing access to this meeting for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs with your request by close of business at least 3 working days prior to the meeting date to Mr. Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758–4460; telephone 512/490–0057; facsimile 512/490–0974; or email *Adam_Zerrenner@fws.gov,* TTY 800–877–8339.

Alternatives

The alternative actions will be compared to the No-Action alternative in the draft EA. The No-Action alternative represents the estimated future conditions under the existing management and use, to which the alternative action's estimated future conditions can be compared. The Service seeks comments and recommendations from stakeholders and the public regarding the alternatives under consideration and others that should be considered.

No-Action Alternative

Under the No-Action alternative, the management and use of the Aquifer will continue regardless of whether an Incidental Take Permit is sought or issued. The District, and those covered by the proposed permit, would continue to be subject to the take prohibitions of the Act. Where potential impacts could not be avoided and where a Federal nexus exists, measures designed to minimize and mitigate for impacts would be addressed through individual formal or informal consultation with the Service. In the absence of a Federal nexus, parties engaging in actions that would affect protected species would comply with the Act by obtaining individual section 10(a)(1)(B) incidental take permits on a project-by-project basis.

Alternative Number One: Proposed Issuance of an Incidental Take Permit

The proposed action is issuance of an incidental take permit based upon an HCP developed by the District. Texas counties that may be included in the proposed permit are those within the District's jurisdiction, including portions of Caldwell, Hays, and Travis Counties. The District has indicated their preference for a permit duration of 20 years.

The actions to be covered under the requested incidental take permit have yet to be determined, but may include activities associated with the ongoing groundwater management and use of the Barton Springs segment of the Edwards Aquifer, and actions to protect spring flow at the multiple spring outlets located at Barton Springs.

The alternative could allow for a comprehensive mitigation approach for unavoidable impacts to listed species while reducing permit processing effort for the Service.

Alternative Number Two: Water Demand Reduction

Under this alternative, the District would create regulatory mechanisms that reduce pumping of fresh water from the Barton Springs Segment of the Edwards Aquifer during periods of drought. If such regulatory demand reductions could avoid adverse impacts to the listed species and their habitats, then no Incidental Take Permit would be required and none would be issued. If demand reduction regulatory programs could not avoid take of listed species, the District would develop an HCP that would minimize and mitigate impacts within their authorities to the maximum extent practicable and seek an Incidental Take Permit.

Alternative Number Three: Water Supply Augmentation and Substitution

Under Alternative Number Three, supplies of freshwater pumped from the Barton Springs segment of the Edwards Aquifer would be augmented or substituted with alternative supplies during periods of drought. If such enhancement or substitution actions could avoid take of the listed species, no Incidental Take Permit would be required and none would be issued. If these measures were not able to avoid all such take, the District would develop an HCP that would minimize and mitigate the impacts of such take to the maximum extent practicable and seek an Incidental Take Permit.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4721 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Joy E. Nicholopoulos

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2014–04825 Filed 3–4–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[AAK4004200/A0R5C4040.999900/134A2100DD]

Proclaiming Certain Lands as Reservation for the Muckleshoot Indian Tribe of Washington State

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation Proclamation.

SUMMARY: This notice informs the public that the Assistant Secretary—Indian Affairs proclaimed approximately 20.16

acres, more or less, as an addition to and becoming a part of the Reservation of the Muckleshoot Indian Tribe on *2/24/14* .

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual.

FOR FURTHER INFORMATION CONTACT: Matthew Kirkland, Bureau of Indian Affairs, Division of Real Estate Services, MS–4639–MIB, 1849 C Street NW., Washington, DC 20240, telephone (202) 208–3615.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tract of land described below. The land was proclaimed to be an addition to and part of the Reservation of the Muckleshoot Indian Tribe for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Reservation of the Muckleshoot Indian Tribe

King County, Washington

The legal description of the property including 20.16 acres is:

The east 957 feet of the northwest quarter of the southeast quarter; LESS the south 480 feet of the east 40 feet; AND LESS that portion lying south of State Highway #5; AND LESS the north 456 feet of the east 957 feet, ALL in the northwest quarter of the southeast quarter of Section 35, Township 21 north, Range 5 east, W.M.; LESS county roads, ALL in King County, Washington.

and

The North 456 feet of the East 957 feet of the Northwest quarter of the Southeast quarter of the Section 35, Township 21 North, Range 5 East, W.M., in King County, Washington; Except the East 191 feet thereof; and Except the North 30 feet thereof for South 376th Street.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: February 24, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–04846 Filed 3–4–14; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Environmental Documents Prepared for Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS mineral proposals by the Gulf of Mexico OCS Region.

SUMMARY: BOEM, in accordance with Federal regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEAs) and Findings of No Significant Impact (FONSIs). These documents were prepared during the period October 1, 2013, through December 31, 2013, for oil, gas, and mineral-related activities that were proposed in the Gulf of Mexico, and are more specifically described in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Attention: Public Information Office (GM 250E), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: BOEM prepares SEAs and FONSIs for certain proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of proposed activities and present BOEM conclusions regarding the significance of those effects. Each SEA is used as a basis for determining whether or not approval of the proposal constitutes a major Federal action that significantly affects the quality of the human environment in accordance with NEPA Section 102(2)(C). A FONSI is prepared in those instances where BOEM finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA regulations.

Activity/operator	Location	Date
EPL Oil & Gas, Inc., Structure Removal, SEA ES/SR 13–153 ..	South Pass, Block 28, Lease OCS 00353, located 4 miles from the nearest Louisiana shoreline.	10/1/2013
Apache Corporation, Structure Removal, SEA ES/SR 13–097	Eugene Island, Block 273, Lease OCS–G 00987, located 56 miles from the nearest Louisiana shoreline.	10/2/2013
Statoil Gulf Properties Inc., Exploration Plan, SEA N–9711	DeSoto Canyon, Blocks 143, 187, & 231, Leases OCS–G 33771, 33774, & 33780, located 100 miles from the nearest Louisiana shoreline.	10/3/2013
Statoil Gulf of Mexico LLC, Exploration Plan, SEA N–9721	Mississippi Canyon, Block 718, Lease OCS–G 34456, located 48 miles from the nearest Louisiana shoreline.	10/3/2013
Stone Energy Corporation, Structure Removal, SEA ES/SR 13–152.	Ship Shoal, Block 146, Lease OCS–G 22705, located 21 miles from the nearest Louisiana shoreline.	10/15/2013
Stone Energy Corporation, Structure Removal, SEA ES/SR 13–140.	South Marsh, Block 108, Lease OCS–G 00792, located 69 miles from the nearest Louisiana shoreline.	10/15/2013
Petroleum Geo Services, Geological & Geophysical Survey, SEA T13–004.	Central & Western Planning Areas of the Gulf of Mexico	10/21/2013
SandRidge Energy Offshore, LLC, Structure Removal, SEA ES/SR 13–032.	Ship Shoal, Block 188, Lease OCS–G 22712, located 31 miles from the nearest Louisiana shoreline.	10/23/2013
Apache Corporation, Structure Removal, SEA ES/SR 13–172	Eugene Island, Block 105, Lease OCS–G 00797, located 17 miles from the nearest Louisiana shoreline.	10/29/2013
Sojitz Energy Venture, Inc., Structure Removal, SEA ES/SR 13–168.	Vermilion, Block 86, Lease OCS–G 22613, located 20 miles from the nearest Louisiana shoreline.	10/30/2013
Apache Corporation, Structure Removal, SEA ES/SR 13–176	Eugene Island, Block 105, Lease OCS–G 00797, located 18 miles from the nearest Louisiana shoreline.	10/31/2013

Activity/operator	Location	Date
W & T Offshore, Inc., Structure Removal, SEA ES/SR 13–165	Ship Shoal, Block 148, Lease OCS–G 11983, located 40 miles from the nearest Louisiana shoreline.	10/31/2013
Apache Corporation, Structure Removal, SEA ES/SR 13–173	Eugene Island, Block 105, Lease OCS–G 00797, located 17 miles from the nearest Louisiana shoreline.	11/4/2013
Apache Corporation, Structure Removal, SEA ES/SR 13–178	South Pelto, Block 25, Lease OCS–G 14535, located 14 miles from the nearest Louisiana shoreline.	11/4/2013
EnVen Energy Ventures, LLC, Structure Removal, SEA ES/SR 13–169.	Viosca Knoll, Block 385, Lease OCS–G 16542, located 36 miles from the nearest Louisiana shoreline.	11/5/2013
Royal Production Company, Inc., Structure Removal, SEA ES/SR 13–189.	Brazos, Block 502, Lease OCS–G 25515, located 32 miles from the nearest Texas shoreline.	11/6/2013
Apache Corporation, Structure Removal, SEA ES/SR 13–179	Eugene Island, Block 105, Lease OCS–00797, located 17 miles from the nearest Louisiana shoreline.	11/6/2013
Fieldwood Energy LLC, Structure Removal, SEA ES/SR 13–170.	Eugene Island, Block 105, Lease OCS–G 00797, located 17 miles from the nearest Louisiana shoreline.	11/12/2013
Apache Shelf, Inc., Structure Removal, SEA ES/SR 13–180	Vermilion, Block 26, Lease OCS 00297, located 3 miles from the nearest Louisiana shoreline.	11/12/2013
Anadarko Petroleum Corporation, Exploration Plan, SEA R–5968.	East Breaks, Block 645, Lease OCS–G 32822, located 118 miles from the nearest Texas shoreline.	11/13/2013
WesternGeco LLC, Geological & Geophysical Survey, SEA L13–032.	Central Planning Area of the Gulf of Mexico	11/14/2013
ION Geophysical Corporation, Geological & Geophysical Survey, SEA L13–031.	Central Planning Area of the Gulf of Mexico	11/15/2013
Shell Offshore Inc., Exploration Plan, SEA R–5976	Central Planning Area of the Gulf of Mexico	11/19/2013
Fieldwood Energy LLC, Structure Removal, SEA ES/SR 13–171.	Eugene Island, Block 105, Lease OCS–G 00797, located 17 miles from the nearest Louisiana shoreline.	11/19/2013
Shell Offshore Inc., Development Operations Coordination Document, SEA S–7626.	Mississippi Canyon, Block 934, Lease OCS–G 07975, located 61 miles from the nearest Louisiana shoreline.	11/19/2013
BHP Billiton Petroleum (GOM) Inc., Development Operations Coordination Document, SEA S–7616.	Green Canyon, Block 653, Lease OCS–G 20084, located 120 miles from the nearest shoreline in Terrebonne Parish, Louisiana.	11/20/2013
Anadarko Petroleum Corporation, Exploration Plan, SEA S–7625.	East Breaks, Block 689, Lease OCS–G 22295 & East Breaks, Block 690, Lease OCS–G 22296, located 121 miles from the nearest shoreline in Brazoria County, Texas.	11/22/2013
Chevron U.S.A. Inc., Exploration Plan, SEA N–9743	Green Canyon, Block 807, Lease OCS–G 31752, located 131 miles from the nearest Louisiana shoreline.	11/27/2013
LLOG Exploration Offshore, L.L.C., Exploration Plan, SEA S–7635.	Mississippi Canyon, Block 705, Lease OCS–G 31521, located 56 miles from the nearest shoreline in Plaquemines Parish, Louisiana.	11/27/2013
Walter Oil & Gas Corporation, Exploration Plan, SEA N–9728	Ewing Bank, Block 833, Lease OCS–G 33706, located 65 miles from the nearest shoreline in Plaquemines Parish, Louisiana.	11/29/2013
Rooster Petroleum, LLC, Structure Removal, SEA ES/SR 13–187.	High Island, Block 115, Lease OCS–G 18936, located 24 miles from the nearest Louisiana shoreline.	12/2/2013
Apache Shelf, Inc., Structure Removal, SEA ES/SR 13–182	Vermilion, Block 26, Lease OCS 00297, located 5 miles from the nearest Louisiana shoreline.	12/2/2013
Union Oil Company of California, Exploration Plan, SEA R–5982.	Walker Ridge, Block 143, Lease OCS–G 21849, located 155 miles from the nearest shoreline in Terrebonne Parish, Louisiana.	12/2/2013
Energy Resource Technology GOM, Inc., Structure Removal, SEA ES/SR 05–123.	Ship Shoal, Block 250, Lease OCS–G G27132, located 91 miles from the nearest Louisiana shoreline.	12/3/2013
BP Exploration & Production Inc., Exploration Plan, SEA R–6009.	Keathley Canyon, Block 57, Lease OCS–G 25777, located 185 miles from the nearest Louisiana shoreline.	12/4/2013
Walter Oil & Gas Corporation, Exploration Plan, SEA R–6015	South Timbalier, Block 72, Lease OCS–G 34322, located 18 miles from the nearest Louisiana shoreline.	12/4/2013
SandRidge Energy Offshore, LLC, Structure Removal, SEA ES/SR 13–035.	West Cameron, Block 246, Lease OCS–G 24721, located 45 miles from the nearest Louisiana shoreline.	12/4/2013
Fieldwood Energy LLC, Structure Removal, SEA ES/SR 13–175.	Eugene Island, Block 105, Lease OCS–G 00797, located 18 miles from the nearest Louisiana shoreline.	12/5/2013
Fieldwood Energy LLC, Structure Removal, SEA ES/SR 13–191.	Eugene Island, Block 105, Lease OCS–G 00797, located 17 miles from the nearest Louisiana shoreline.	12/9/2013
Apache Corporation, Structure Removal, SEA ES/SR 13–202	High Island, Block 52, Lease OCS–G 00511, located 12 miles from the nearest Texas shoreline.	12/9/2013
Apache Shelf, Inc., Structure Removal, SEA ES/SR 13–181	Vermilion, Block 26, Lease OCS–G 00297, located 5 miles from the nearest Louisiana shoreline.	12/9/2013
Rooster Petroleum, LLC, Structure Removal, SEA ES/SR 13–188.	South Timbalier, Block 99, Lease OCS–G 10825, located 25 miles from the nearest Louisiana shoreline.	12/10/2013
Shell Offshore Inc., Geological & Geophysical Survey, SEA L13–035.	Central Planning Area of the Gulf of Mexico	12/11/2013
Apache Corporation, Structure Removal, SEA ES/SR 13–197	Grand Isle, Block 20, Lease OCS–G 03596, located 12 miles from the nearest Louisiana shoreline.	12/16/2013
WesternGeco LLC, Geological & Geophysical Survey, SEA L13–038.	Central & Eastern Planning Areas of the Gulf of Mexico	12/17/2013
Apache Corporation, Structure Removal, SEA ES/SR 13–203	High Island, Block 52, Lease OCS–G 00512, located 14 miles from the nearest Louisiana shoreline.	12/17/2013

Activity/operator	Location	Date
Fairfield Nodal, Geological & Geophysical Survey, SEA L13–039.	Central Planning Area of the Gulf of Mexico	12/18/2013
Apache Shelf, Inc., Structure Removal, SEA ES/SR 13–201	Vermilion, Block 26, Lease OCS–G 00297, located 5 miles from the nearest Louisiana shoreline.	12/18/2013
Anadarko Petroleum Corporation, Exploration Plan, SEA S–7636.	Green Canyon, Blocks 859 & 903, Lease OCS–G 24194 & 24197, located south of Terrebonne Parish, Louisiana, 135 miles from the nearest shoreline.	12/19/2013
Eni US Operating Co. Inc., Exploration Plan, SEA N–9735	Mississipi Canyon, Block 215, Lease OCS–G 24060, located southeast of Venice, Louisiana, 63 miles from the nearest shoreline in Plaquemines Parish, Louisiana.	12/20/2013
Noble Energy, Inc., Exploration Plan, SEA N–9756	Mississippi Canyon, Blocks 436, 479, & 480, Lease OCS–G 31503, 33154, & 33157, located southeast of New Orleans, Louisiana, 73 miles from the nearest shoreline.	12/20/2013
TGS, Geological & Geophysical Survey, SEA L13–041	Central Planning Area of the Gulf of Mexico, located 83 miles from the nearest shoreline.	12/23/2013
Shell Offshore Inc., Exploration Plan, SEA R–6036	DeSoto Canyon, Block 843, Lease OCS–G 23540, located 82 miles from the nearest Louisiana shoreline.	12/24/2013
Chevron U.S.A. Inc., Exploration Plan, SEA N–9754	Keathley Canyon, Block 10, Lease OCS–G 27698, located southeast of Brazoria County, TX, 177 miles from the nearest shoreline.	12/24/2013

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about the SEAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact BOEM at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: January 31, 2014.

John L. Rodi,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 2014–04864 Filed 3–4–14; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–910]

Certain Television Sets, Television Receivers, Television Tuners, and Components Thereof; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 28, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Cresta Technology Corporation, of Santa Clara, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain television sets, television receivers, television tuners, and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,075,585 (''the '585 patent''); U.S. Patent No. 7,265,792 (''the '792 patent''); and U.S. Patent No. 7,251,466 (''the '466 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue limited exclusion orders and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone no. (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone no. (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 26, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain television sets, television receivers, television tuners, and components thereof by reason of infringement of one or more of claims 1–3, 5, 10, 12–14, and 16–19 of the '585 patent; claims 1–17 and 25–27 of the '792 patent; and claims 1, 2, 5, 8, 9, 11–13, 16, 20–22, 24–26, 29, 31, 32, 35–37, and 39 of the '466 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant:

Cresta Technology Corporation, 3900 Freedom Circle, Suite 201, Santa Clara, CA 95054.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Silicon Laboratories, Inc., 400 West Cesar Chavez Street, Austin, TX 78701.
Samsung Electronics Co., Ltd., 129, Samsung-ro, Yeongton-gu, Suwon-si, Gyeonggi-do, Republic of Korea.
Samsung Electronics America, Inc., 85 Challenger Road, Ridgefield Park, NJ 07660.
LG Electronics, Inc., LG Twin Towers, 20 Yeouido-dong, Yeoungdeungpo-gu, Seoul, Republic of Korea 150–7–21.
LG Electronics U.S.A., 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632.
MaxLinear, Inc., 2051 Palomar Airport Road, Suite 100, Carlsbad, CA 92011.
Sharp Corporation, 22–22 Nagaike-cho, Abeno-ku, Osaka, 545–8522, Japan.
Sharp Electronics Corporation, 1 Sharp Plaza, Mahwah, NJ 07495–1163.
VIZIO, Inc., 39 Tesla, Irvine, CA 92618.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondents.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2013).

By order of the Commission.

Issued: February 27, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–04801 Filed 3–4–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0101]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Tribal Requests for Accelerated Exercise of Jurisdiction Under Section 204(a) of the Indian Civil Rights Act of 1968, as Amended

ACTION: 60-Day Notice.

The Department of Justice, Office of Tribal Justice, 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 of 1995. Initial approval was granted on November 20, 2013 under OMB control number 1105–0101. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until May 5, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need additional information, please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) T*ype of Information Collection:* Extension of approved collection.

(2) *Title of the Form/Collection:* Request for Accelerated Authority to Exercise Special Domestic Violence Criminal Jurisdiction.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number. Component: Office of Tribal Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Tribal governments. Other: None.

Abstract: The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was signed into law on March 7, 2013. Section 904 of VAWA 2013 recognizes the inherent power of ''participating tribes'' to exercise special domestic violence criminal jurisdiction over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country. Section 904 also specifies the rights that a participating tribe must provide to defendants in special domestic violence criminal jurisdiction cases. Section 908(b)(1) provides that tribes generally cannot exercise the special jurisdiction until March 7, 2015, but Section 908(b)(2) establishes a pilot project that authorizes the Attorney General, in the exercise of his discretion, to grant a tribe's request to be designed as a ''participating tribe'' on an accelerated basis and to commence exercising the special jurisdiction on a date (prior to March 7, 2015) set by the Attorney General, after coordinating with the Secretary of the Interior, consulting with affected tribes, and concluding that the tribe's criminal justice system has adequate safeguards in place to protect defendants' rights, consistent with Section 204 of the Indian Civil Rights Act, as amended, 25 U.S.C. 1304. The Department of Justice has published a notice seeking comments on procedures for an Indian tribe to request designation as a ''participating tribe'' on an accelerated basis), and for the

Attorney General to act on such requests, 78 Fed. Reg. 35961 (June 14, 2013). Pursuant to the notice, the Attorney General has delegated to the Associate Attorney General the authority to decide whether to grant the request of a tribe to be designated as a ''participating tribe'' prior to March 7, 2015. The purpose of the collection is to provide information from the requesting tribe sufficient for the Associate Attorney General to make that decision.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Fewer than 40 respondents; average of 16 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 640 annual total burden hours associated with this collection.

The Department of Justice anticipates responses from between 5 and 40 Tribes. The information collection requires Indian tribes seeking accelerated exercise of special domestic violence criminal jurisdiction to provide certain information relating to the tribe's criminal justice system and safeguards for victims' and defendants' rights.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, U.S. Department of Justice, Two Constitution Square, 145 N Street, NE., Room 1407B, Washington, DC 20530.

Dated: February 28, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–04829 Filed 3–4–14; 8:45 am]

BILLING CODE 4410–A5–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2014 Allowable Charges for Agricultural Workers' Meals and Travel Subsistence Reimbursement, Including Lodging

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this Notice to announce (1) the allowable charges for 2014 that employers seeking H–2A workers may charge their workers when the employer provides three meals a day, and (2) the maximum travel subsistence meal reimbursement that a worker with receipts may claim in 2014. The Notice also includes a reminder regarding employers' obligations with respect to overnight lodging costs as part of required subsistence.

DATES: *Effective Date:* This notice is effective on March 5, 2014.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification (OFLC), U.S. Department of Labor, Room C–4312, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The United States (U.S.) Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary agricultural workers in the U.S. unless the petitioner has received from the Department an H–2A labor certification. The H–2A labor certification provides that: (1) There are not sufficient U.S. workers who are able, willing, and qualified, and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5).

Allowable Meal Charge

Among the minimum benefits and working conditions that the Department requires employers to offer their U.S. and H–2A workers are three meals a day or free and convenient cooking and kitchen facilities. 20 CFR 655.122(g). Where the employer provides the meals, the job offer must state the charge, if any, to the worker for such meals. *Id.*

The Department provides, at 20 CFR 655.173(a), the methodology for determining the maximum amounts that H–2A agricultural employers may charge their U.S. and foreign workers for providing them with three meals per day during employment. This methodology provides for annual adjustments of the previous year's maximum allowable charge based upon updated Consumer Price Index (CPI) data. The maximum charge allowed by 20 CFR 655.122(g) is adjusted by the same percentage as the 12-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food).[1] The OFLC Certifying Officer may also permit an employer to charge workers a higher amount for providing them with three meals a day, if the higher amount is justified and sufficiently documented by the employer, as set forth in 20 CFR 655.173(b).

The Department has determined that the percentage change between December of 2012 and December of 2013 for the CPI–U for Food was 1.4 percent. Accordingly, the maximum allowable charge under 20 CFR 655.122(g) shall be no more than $11.58 per day, unless the OFLC Certifying Officer approves a higher charge as authorized under 20 CFR 655.173(b).

Reimbursement for Daily Travel Subsistence

The regulations at 20 CFR 655.122(h) establish that the minimum daily travel subsistence expense for meals, for which a worker is entitled to reimbursement, must be at least as much as the employer would charge for providing the worker with three meals a day during employment (if applicable), but in no event less than the amount permitted under § 655.173(a), i.e. the charge annually adjusted by the 12-month percentage change in CPI for all Urban Consumers for food. The regulation is silent about the maximum amount to which a qualifying worker is entitled.

The Department bases the maximum meals component of the daily travel subsistence expense on the standard minimum Continental United States (CONUS) per diem rate as established by the General Services Administration (GSA) at 41 CFR part 301, formerly published in Appendix A, and now found at *www.gsa.gov/perdiem.* The CONUS minimum meals component remains $46.00 per day for 2014.[2] Workers who qualify for travel reimbursement are entitled to reimbursement for meals up to the CONUS meal rate when they provide receipts. In determining the appropriate amount of reimbursement for meals for less than a full day, the employer may provide for meal expense reimbursement, with receipts, to 75 percent of the maximum reimbursement for meals of $34.50, as provided for in the GSA per diem schedule. If a worker has no receipts, the employer is not obligated to reimburse above the

[1] Consumer Price Index—December 2013, published January 16, 2014 at *http://data.bls.gov/pdq/SurveyOutputServlet.*

[2] Maximum Per Diem Rates for the Continental United States (CONUS), 78 FR 54651 (Sept. 5, 2013); see also *www.gsa.gov/perdiem.*

minimum stated at 20 CFR 655.173(a) as specified above.

The term ''subsistence'' includes both meals and lodging during travel to and from the worksite. Therefore, an employer is responsible for providing (either paying in advance or reimbursing a worker) the reasonable costs of transportation and daily subsistence between the employer's worksite and the place from which the worker comes to work for the employer, if the worker completes 50 percent of the work contract period, and upon the worker completing the contract, return costs. In those instances where a worker must travel to obtain a visa so that the worker may enter the U.S. to come to work for the employer, the employer must pay for the transportation and daily subsistence costs of that part of the travel as well.

As the Department has stated before, we interpret the regulation to require the employer to assume responsibility for the reasonable costs associated with the worker's travel, including transportation, food, and, in those instances where it is necessary, lodging. The minimum and maximum daily travel meal reimbursement amounts are established above. If transportation and lodging are not provided by the employer, the amount an employer must pay for transportation and, where required, lodging, must be no less than (and is not required to be more than) the most economical and reasonable costs. The employer is responsible for those costs necessary for the worker to travel to the worksite if the worker completes 50 percent of the work contract period, but is not responsible for unauthorized detours, and if the worker completes the contract, return transportation and subsistence costs, including lodging costs where necessary. This policy applies equally to instances where the worker is traveling within the U.S. to the employer's worksite.

For further information on when the employer is responsible for lodging costs, please see the Department's H–2A Frequently Asked Questions on Travel and Daily Subsistence, which may found on the OFLC Web site: *http://www.foreignlaborcert.doleta.gov/*.

Signed in Washington, DC, this 21st day of February, 2014.

Eric Seleznow,

Deputy Assistant Secretary, Employment and Training Administration.

[FR Doc. 2014–04895 Filed 3–4–14; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Agency Information Collection Activities: Extension of Existing Information Collection; Comment Request

AGENCY: Veterans' Employment and Training Service, Labor.

ACTION: 60 Day Notice Of Information Collection For Review; Federal Contractor Veterans' Employment Reports Vets-100 And Vets-100A; OMB Control No. 1293 0005.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Veterans' Employment and Training Service (VETS) is soliciting comments concerning the proposed extension of the currently approved information collection request for the ''Federal Contractor Veterans' Employment Report VETS–100'' and the ''Federal Contractor Veterans' Employment Report VETS–100A.'' A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice. There have been no changes to the current VETS–100 and the VETS–100A Reports. Each report has the same number of reporting elements.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 5, 2014.

ADDRESSES: Comments are to be submitted to William Kenan Torrans, Deputy Director for the Division of Investigation and Compliance, VETS, U.S. Department of Labor, Room S–1316, 200 Constitution Avenue NW., Washington, DC 20210. Electronic transmission is the preferred method for submitting comments. Email may be sent to *FCP-PRA-04-VETS@dol.gov.* Include ''VETS–100'' or ''VETS–100A''in the subject line of the message. Written comments of 10 pages or fewer also may be transmitted by facsimile to (202) 693–4755 (this is not a toll free number). Receipt of submissions, whether by U.S. Mail, email or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4731 (VOICE) or (202) 693–4760 (TTY/TDD) (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (''VEVRAA''), 38 U.S.C. 4212(d), requires Federal contractors and subcontractors subject to the Act's affirmative action provisions in 38 U.S.C. 4212(a) to track and report annually to the Secretary of Labor the number of employees in their workforces, by job category and hiring location, who belong to the specified categories of covered veterans. VETS maintains two sets of regulations to implement the reporting requirements under VEVRAA, and uses two different forms for providing the required information on the employment of covered veterans.

The regulations set forth in 41 CFR part 61–250 require contractors that have a Government contract of $25,000 or more entered into before December 1, 2003, to use the Federal Contractor Veterans' Employment Report VETS–100 (''VETS–100 Report'') form for reporting information on the number of covered veterans in their workforces.

The regulations set forth in 41 CFR part 61–300 implement amendments to the reporting requirements under VEVRAA that were made by the Jobs for Veterans Act (JVA) (Pub. L. 107–288) enacted in 2002. The JVA amended VEVRAA by: (1) Increased from $25,000 to $100,000, the dollar amount of the contract that subjects a Federal contractor to the requirement to report on veterans' employment; and (2) changed the categories of covered veterans under VEVRAA, and thus the categories of veterans that contractors are required to track and report on annually.

The regulations in 41 CFR part 61–300 require contractors with a Government contract entered into or modified on or after December 1, 2003, in the amount of $100,000 or more to use the Federal Contractor Veterans' Employment Report VETS–100A (''VETS–100A Report'') form for reporting information on their

employment of covered veterans under VEVRAA.

Both the VETS–100 and VETS–100A Reports are currently approved under OMB No. 1293–0005.

II. Desired Focus of Comments

Currently VETS is soliciting comments concerning a request to extend the currently approved information collection request. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval of the extension of the currently approved information collection request in order to carry out its responsibilities to administer and enforce compliance with the contractor reporting requirements under VEVRAA, as amended by the JVA.

Type of Review: Extension without change of currently approved collection.

Agency: Veterans' Employment and Training Service.

Title: Federal Contractor Veterans' Reports VETS–100 and VETS–100A.

OMB Number: 1293–0005.

Affected Public: Government contractors and subcontractors with a contract of $25,000 or more entered into before December 1, 2003, and Government contractors and subcontractors with a contract of $100,000 or more entered into or modified on or after December 1, 2003, that are required to comply with the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act.

Total Respondents: 20,700.

Total Annual Responses: 390,000.

Average Time per Response:

- Electronic Submission—30 minutes
- Paper Submission—one hour

Total Burden Hours: 198,900.

Frequency: Annually.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0. The information contractors report about their veterans' employment is collected and maintained in the normal course of business. There are no requirements for contractors to have any kind of equipment to be able to comply with this collection of information.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed in Washington, DC, this 25th day of February 2014.

Keith Kelly,

Assistant Secretary of Labor for Veterans' Employment and Training Service.

[FR Doc. 2014–04870 Filed 3–4–14; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Mathematical and Physical Sciences (#66).

Date and Time: April 3, 2014: 10:00 a.m. to 5:00 p.m.; April 4, 2014: 8:30 a.m. to 4:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22230.

To help facilitate your entry into the building, contact Caleb Autrey (*cautrey@nsf.gov*). Your request should be received on or prior to March 28, 2014.

Virtual attendance will be supported. For detailed instructions, visit the meeting Web site at *http://www.nsf.gov/events/event_summ.jsp?cntn_id=130168&org=MPS*.

Type of Meeting: Open.

Contact Person: Dr. Kelsey Cook, Staff Associate, National Science Foundation, 4201 Wilson Boulevard, Suite 1005, Arlington, Virginia 22230, 703–292–7490 and Caleb Autrey, National Science Foundation, 4201 Wilson Boulevard, Suite 1005, Arlington, Virginia 22230, 703–292–5137.

Minutes: Meeting minutes and other information may be obtained from the Staff Associate at the above address or the MPSAC Web site at *http://www.nsf.gov/mps/advisory.jsp*.

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning research in mathematical and physical sciences.

Agenda

April 3

Joint session with the Advisory Committee on Cyberinfrastructure
State of the Directorate for Mathematical and Physical Sciences: Challenges and Opportunities
Report from the StatsNSF Subcommittee
Report from the Food Security Subcommittee
Merit Review—Part I: Issues

April 4

Report from the Optics and Photonics Subcommittee
Session with the Office of the Director
Report from the Materials Instrumentation Subcommittee
Merit Review Part II: Ideas
Briefing from the Committee on Equal Opportunity in Science and Engineering
Briefing from the International Coordinating Committee (International Framework & AC–ISE)
Briefing from the NSF Public Access Working Group
Briefing on the NSF Strategic Plan
New Challenges/Subcommittees

Dated: February 28, 2014.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2014–04836 Filed 3–4–14; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Executive Committee, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE & TIME: Monday, March 3, 2014, at 4:00 p.m. EST.

SUBJECT MATTER: EC members will discuss legislative matters.

STATUS: Closed.

This meeting will be held by teleconference. Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting). Point of contact for this

meeting is Peter Arzberger at *parzberg@nsf.gov.*

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2014–04934 Filed 3–3–14; 11:15 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0230]

Draft Fiscal Years 2014–2018 Strategic Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting comment on draft NUREG–1614, Volume 6, ''U.S. Nuclear Regulatory Commission Strategic Plan, Fiscal Years 2014–2018.'' The draft Strategic Plan provides the agency's long-term, results-focused goals and objectives and its proposed strategies for achieving them for the planning period. The NRC encourages and welcomes public comments that can help it respond to challenges and shape its strategic direction over the next four years, particularly comments on the plan's goals, objectives, and strategies.

DATES: Submit comments by April 4, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to ensure consideration of comments received on or before this date.

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

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0230. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Francine Goldberg, Office of the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone: 301–415–6921 or email: *Francine.Goldberg@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0230 when contacting the NRC about the availability of information for this draft Strategic Plan. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0230.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft Strategic Plan is available in ADAMS under Accession No. ML13254A234.
- *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.
- *NRC's Public Web site:* The NRC's draft Strategic Plan may be viewed online on the NRC's Public Web site on the Documents for Comment Web page at *http://www.nrc.gov/public-involve/doc-comment.html#nuregs.*

B. Submitting Comments

Please include Docket ID NRC–2013–0230 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

In accordance with the Government Performance and Results Modernization Act (GPRAMA) of 2010, agencies are required to submit their strategic plans to Congress the year following the start of a presidential term. The Commission has approved a draft Strategic Plan and is now seeking comments from the public so that the agency may benefit from a wide range of stakeholder input to shape the NRC's strategic direction for the upcoming planning period.

III. Draft Strategic Plan

The draft Strategic Plan describes the agency's mission and its two strategic goals, which, although slightly reworded for clarity and readability, remain fundamentally unchanged from the current plan. The NRC's mission is to license and regulate the Nation's civilian use of radioactive materials to protect the public health and safety, promote the common defense and security, and protect the environment. Its two strategic goals are to ensure the safe use of radioactive materials and the secure use of radioactive materials. New elements of the plan include several strategic objectives with associated strategies and key activities that will be used to achieve the agency's strategic goals.

The draft strategies address the key challenges and external factors the agency will face as the regulatory environment continues to change during the upcoming planning period. Examples include processing license applications involving new technologies, such as small modular reactors and continued implementation of enhancements to improve reactor safety based on insights from the 2011 nuclear accident at Fukushima Dai-ichi. The continued globalization of nuclear technology and the nuclear supply chain is another factor that will affect the NRC, driving the need for increased international engagement on the safe and secure use of radioactive material and the need for new oversight approaches to ensure that foreign components used in U.S. nuclear

facilities are in compliance with NRC requirements.

The NRC encourages all interested parties to comment on the draft Strategic Plan, particularly on the plan's goals, objectives, and strategies. Stakeholder feedback will be valuable in helping the Commission develop a final Strategic Plan that has the benefit of the many views of the public and the regulated civilian nuclear industry. The NRC will consider the comments submitted and may use them, as appropriate, in the preparation of the final Strategic Plan; however, the NRC does not anticipate responding to individual comments.

Dated at Rockville, Maryland, this 27th day of February, 2014.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2014–04830 Filed 3–4–14; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective Date:* March 5, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 26, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 78 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2014–19, CP2014–32.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2014–04778 Filed 3–4–14; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* March 5, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 26, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 79 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2014–20, CP2014–33.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2014–04781 Filed 3–4–14; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30969; File No. 812–14282]

Hatteras Alternative Mutual Funds Trust, et al., Notice of Application

February 27, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements with Wholly-Owned Sub-Advisers (as defined below) and Non-Affiliated Sub-Advisers (as defined below) without shareholder approval and would grant relief from certain disclosure requirements. The order would supersede a prior order that granted relief with respect to non-affiliated sub-advisers and from certain disclosure requirements (''Prior Order'').[1]

APPLICANTS: Hatteras Alternative Mutual Funds Trust (''HAMFT'') (f/k/a/AIP Alternative Strategies Funds), Underlying Funds Trust (''UFT'') (HAMFT and UFT, each, a ''Trust'' and, together, the ''Trusts''), and Scotland Acquisition, LLC, d/b/a Hatteras Funds, LLC (''Adviser'').

DATES: *Filing Dates:* The application was filed on February 21, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 24, 2014 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: 8540 Colonnade Center Drive, Suite 401, Raleigh, NC 27615.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. Each Trust currently is comprised of five separate series of shares (each, a ''Series''), each with its own distinct investment objective, strategies, policies and restrictions. The Series of HAMFT pursue their respective investment objectives by investing substantially all of their assets in one or more of the Series of UFT pursuant to section 12(d)(1)(G) of the Act. The Adviser, a Delaware limited liability company, is a wholly-owned subsidiary of RCS Advisory Services, LLC, which is an operating subsidiary of RCS Capital

[1] AIP Alternative Strategies Funds and Alternative Investment Partners LLC, Investment Company Act Release Nos. 26284 (Dec. 4, 2003) (notice) and 26318 (Jan. 5, 2004) (order).

Corporation.[2] The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').[3] Any future Adviser will also be registered as an investment adviser under the Advisers Act.

2. The Adviser will serve as the investment adviser to each Series pursuant to an investment advisory agreement with the applicable Trust (''Investment Advisory Agreement'').[4] The Investment Advisory Agreement has been approved, or will be approved, by the board of trustees of the applicable Trust (''Board''),[5] including a majority of the members of the Board who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the applicable Trust, of a Series or the Adviser (''Independent Trustees'') and by the shareholders of the relevant Series as required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of the Investment Advisory Agreement comply with section 15(a) of the Act.

3. Under the terms of the Investment Advisory Agreement, the Adviser, subject to the supervision of the Board, will provide continuous investment management of the assets of each Series. The Adviser will periodically review each Series' investment objective, policies and strategies, and based on the need of a Series may recommend changes to the investment objective, policies and strategies of the Series for consideration by the Board. For its services to each Series under the Investment Advisory Agreement, the Adviser will receive an advisory fee from that Series based on the average daily net assets of that Series. The Investment Advisory Agreement provides that the Adviser may, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Series (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Series to a Sub-Adviser.[6]

4. Applicants request an order to permit the Adviser, subject to the approval of the Board, including a majority of the Independent Trustees, to, without obtaining shareholder approval: (i) Select Sub-Advisers to manage all or a portion of the assets of a Series and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisers; and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisers.[7] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Sub-Advised Series, of the Trust, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Sub-Advised Series (''Affiliated Sub-Adviser'').

5. Pursuant to the terms of the Investment Advisory Agreement, the Adviser will have overall responsibility for the management and investment of each Series' assets. These responsibilities include recommending the removal or replacement of Sub-Advisers, determining the portion of that Sub-Advised Series' assets to be managed by any given Sub-Adviser and reallocating those assets as necessary from time to time.

6. The Adviser will enter into sub-advisory agreements with various Sub-Advisers (''Sub-Advisory Agreements'') to provide investment management services to the Sub-Advised Series. The terms of the Sub-Advisory Agreements will comply with the requirements of section 15(a) of the Act and will be approved by the Board, including a majority of the Independent Trustees, in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The specific day-to-day investment decisions for each applicable Series will be made by that Series' Sub-Adviser, which has discretionary authority to invest the assets or a portion of the assets of that Series subject to the general supervision of the Adviser and the Board. The Adviser will compensate each Sub-Adviser out of the advisory fees paid to the Adviser under the Investment Advisory Agreement; in the future, Sub-Advised Series may directly pay advisory fees to the Sub-Advisers.

7. Sub-Advised Series will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Notice and Access Procedures''): (a) Within 90 days after a new Sub-Adviser is hired for any Sub-Advised Series, that Sub-Advised Series will send its shareholders either a Multi-Manager Notice or a Multi-Manager Notice and Multi-Manager Information Statement;[8] and (b) the Sub-Advised Series will make the Multi-Manager Information Statement available on the Web site identified in

[2] The term ''Adviser'' includes (a) Scotland Acquisition, LLC, d/b/a/Hatteras Funds, LLC and (b) any entity controlling, controlled by or under common control with, Scotland Acquisition, LLC, d/b/a Hatteras Funds, LLC or its successors. For the purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] Applicants request that the relief apply to applicants, as well as to any future Series and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser; (b) uses the manager of managers structure described in the application (''Manager of Managers Structure''); and (c) complies with the terms and conditions of the application (''Sub-Advised Series''). All registered open-end management investment companies that currently intend to rely on the requested order are named as applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Sub-Advised Series contains the name of a Sub-Adviser, the name of the Adviser that serves as the primary adviser to the Sub-Advised Series, or a trademark or trade name that is owned by that Adviser, will precede the name of the Sub-Adviser.

[4] On October 1, 2013, RCS Capital Corporation and the Adviser entered into an asset purchase agreement (''Purchase Agreement'') with Hatteras Alternative Mutual Funds, LLC (''HAMF'') (f/k/a AIP Alternative Investment Partners LLC), the current investment adviser to the Trusts. Under the Purchase Agreement, the Adviser will purchase from HAMF, and HAMF will sell to the Adviser, substantially all the assets related to the business and operations of HAMF (the ''Transfer''). The consummation of the Transfer is subject to various conditions, including shareholder approval of the Investment Advisory Agreements between the Adviser and the applicable Trust. The requested order would supersede the Prior Order following the consummation of the Transfer.

[5] The term ''Board'' also includes the board of trustees or directors of a future Series.

[6] As used herein, a ''Sub-Adviser'' for a Series is: (a) An indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Series; (b) a sister company of the Adviser for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same entity that, indirectly or directly, wholly owns the Adviser (each of (a) and (b), a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''); or (c) an investment sub-adviser for that Series that is not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the applicable Series, the applicable Trust, or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Series (each, a ''Non-Affiliated Sub-Adviser'').

[7] Shareholder approval will continue to be required for any other sub-adviser change (not otherwise permitted by rule or other action of the Commission or staff) and material amendments to an existing sub-advisory agreement with any sub-adviser other than a Non-Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser (all such changes referred to as ''Ineligible Sub-Adviser Changes'').

[8] A ''Multi-Manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a-16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-Manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-Manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-Manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-Manager Information Statement may be obtained, without charge, by contacting the Sub-Advised Series.

A ''Multi-Manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the order to permit Aggregate Fee Disclosure (as defined below). Multi-Manager Information Statements will be filed with the Commission via the EDGAR system.

the Multi-Manager Notice no later than when the Multi-Manager Notice (or Multi-Manager Notice and Multi-Manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days thereafter. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-Manager Information Statement. Applicants state that each Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending a Sub-Advisory Agreement.

8. Applicants also request an order exempting the Sub-Advised Series from certain disclosure obligations that may require each Sub-Advised Series to disclose fees paid by the Adviser to each Sub-Adviser. Applicants seek relief to permit each Sub-Advised Series to disclose (as a dollar amount and a percentage of the Sub-Advised Series' net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, the ''Aggregate Fee Disclosure'').

Applicants' Legal Analysis

1. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f-2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Sub-Advisers that are suited to achieve the Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Adviser is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Sub-Advised Series are paying the Adviser—the selection, supervision and evaluation of the Sub-Adviser—without incurring unnecessary delays or expenses is appropriate in the interest of the Series' shareholders and will allow the Series to operate more efficiently. Applicants state that the Investment Advisory Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the Board, including a majority of the Independent Trustees, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Advisory Agreement.

7. Applicants assert that disclosure of the individual fees that the Adviser or Sub-Advised Series would pay to the Sub-Advisers would not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisers are to inform shareholders of expenses to be charged by a particular Sub-Advised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Adviser, or the Aggregate Fee Disclosure, in the case of a Sub-Advised Series that directly compensates a Sub-Adviser, will be fully disclosed and, therefore, shareholders will know what the Sub-Advised Series' fees and expenses are and will be able to compare the advisory fees a Sub-Advised Series is charged to those of other investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Sub-Advised Series because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. Applicants state that the Adviser may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts if the Adviser is not required to disclose the Sub-Advisers' fees to the public. Applicants submit that the relief requested to use Aggregate Fee Disclosure will encourage Sub-Advisers to negotiate lower sub-advisory fees with the Adviser if the lower fees are not required to be made public.

8. For the reasons discussed above, applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Sub-Advised Series in the manner described in the application must be approved by shareholders of a Sub-Advised Series before that Sub-Advised Series may rely on the requested relief. In addition, applicants state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest, including any posed by the use of Wholly-Owned Sub-Advisers, and provide that shareholders are informed when new Sub-Advisers are hired. Applicants assert that conditions 6, 7, 9, 10 and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to

monitor and address any conflicts of interest with affiliated persons of the Adviser, including Wholly-Owned Sub-Advisers. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Sub-Advised Series may rely on the order requested in the application, the operation of the Sub-Advised Series in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisers, has been, or will be, approved by, a majority of the Sub-Advised Series' outstanding voting securities, as defined in the Act, or in the case of a Sub-Advised Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Sub-Advised Series' shares to the public.

2. The prospectus for each Sub-Advised Series will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Sub-Advised Series will hold itself out to the public as employing the Manager of Managers Structure. Each prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. The Adviser will provide general management services to each Sub-Advised Series, including overall supervisory responsibility for the general management and investment of the Sub-Advised Series' assets, and, subject to review and approval by the Board, the Adviser will: (a) Set the Sub-Advised Series' overall investment strategies; (b) evaluate, select, and recommend Sub-Advisers to manage all or a portion of the Sub-Advised Series' assets; and (c) implement procedures reasonably designed to ensure that the Sub-Advisers comply with a Sub-Advised Series' investment objectives, policies and restrictions. Subject to review by the Board, the Adviser will (a) when appropriate, allocate and reallocate the Sub-Advised Series' assets among multiple Sub-Advisers; and (b) monitor and evaluate the performance of Sub-Advisers.

4. A Sub-Advised Series will not make any Ineligible Sub-Adviser Changes without the approval of the shareholders of the applicable Sub-Advised Series.

5. A Sub-Advised Series will inform shareholders of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Notice and Access Procedures.

6. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

7. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will continue to be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Sub-Advised Series basis. The information will reflect the impact on profitability of the hiring or termination of any sub-adviser during the applicable quarter.

9. Whenever a sub-adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. Whenever a sub-adviser change is proposed for a Sub-Advised Series with an Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Trust's Board minutes, that such change is in the best interests of the Sub-Advised Series and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser or Wholly-Owned Sub-Adviser derives an inappropriate advantage.

11. No trustee or officer of the Trusts or of a Sub-Advised Series or any partner, director, manager or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser except for: (a) Ownership of interests in the Adviser or any entity, other than a Wholly-Owned Sub-Adviser, that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

12. Each Sub-Advised Series will disclose the Aggregate Fee Disclosure in its registration statement.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

14. For Sub-Advised Series that pay fees to a Sub-Adviser directly from fund assets, any changes to a Sub-Advisory Agreement that would result in an increase in the total management and advisory fees payable by a Sub-Advised Series will be required to be approved by the shareholders of the Sub-Advised Series.

For the Comission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04800 Filed 3–4–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71624; File No. SR–BX–2014–005]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Establishment of Fees for New Optional Means for Clients To Receive BX TotalView ITCH Market Data

February 27, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2014, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for new optional means for clients to receive BX TotalView ITCH market data. Specifically, BX proposes to offer remote Multi-cast ITCH Wave Ports for clients co-located at third party data centers, through which BX TotalView

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

ITCH market data will be distributed after delivery to those data centers via wireless network. BX is not offering a new market data product.

The text of the proposed rule change is below; proposed new language is in *italics.*

* * * * *

7015. Access Services.

The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ OMX BX Equities Market, as well as ports to receive data from the NASDAQ OMX BX Equities Market:

- $500 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1000 per month, and TCP ITCH data feed pairs, for which the fee is $750 per month for each port pair.
- Internet Ports: An additional $200 per month for each Internet port that requires additional bandwidth.
- *Remote Multicast ITCH Wave Ports: $2,500 for installation and then $5,000 per month. These fees are subject to a 30-day testing period during which otherwise applicable fees are waived, and a one-year minimum purchase period.*
- TradeInfo BX is available to Members for a fee of $95 per user per month.

* * * * *

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend BX Rule 7015 to establish fees for remote Multi-cast ITCH Wave Ports for clients co-located at third-party data centers, through which BX TotalView ITCH market data will be distributed after delivery to those data centers via a wireless network.

Wireless technology has been in existence for many years, used primarily by the defense, retail and telecommunications industries. Wireless connectivity involves the beaming of signals through the air between towers that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), message latency is reduced. The continued use of this technology by the defense industry and regulation of the spectrum by the FCC demonstrates the secure nature of wireless networks.

During the last few years, wireless technology has been introduced in the financial services industry. In offering optional wireless connectivity via a vendor-supplied network, BX is responding to requests from clients that wish to utilize the technology.

Remote Multi-cast ITCH (MITCH) Wave Ports. BX proposes to offer remote Multi-cast ITCH Wave Ports for clients co-located at third-party data centers. BX TotalView ITCH market data will be delivered to Exchange owned cabinets at those data centers via a wireless network. Clients will have the option of cross-connecting to the MITCH Wave Ports in those data centers to receive the raw BX Multi-cast data feed, TotalView ITCH. An installation charge for the remote port would be, at each of the locations, $2,500 for installation, and $5,000 as a monthly recurring fee. This offering, which is entirely optional, will enable delivery of BX TotalView ITCH to the third-party data centers at the same low latency.[3] Clients opting to pay for the remote MITCH Wave Ports will continue to be fee liable for the applicable market data fees as described in BX Rule 7034.

This filing is similar to changes proposed to NASDAQ Rule 7015.[4] The only differences are that the market data that will be delivered to these remote MITCH Wave Ports is BX TotalView instead of NASDAQ TotalView, and the monthly recurring fee is lower ($5,000 instead of $7,500) due to the network bandwidth requirements for BX TotalView being less than that for NASDAQ TotalView.

BX will utilize a network vendor to supply wireless connectivity from the Carteret data center to the Secaucus Equinix data center (NY4) used by Direct Edge and other exchanges, and the Weehawken Savvis data center (NJ2) used by BATS and other ATS's. The vendor has installed, tested and will maintain the necessary communication equipment for this wireless network between the data centers.

BX is offering this particular equity feed because this feed was requested by clients. There is limited bandwidth available on the wireless connection, and the Exchange has opted to offer those that are in most demand to start. Additional feeds may be added based on overall client demand and bandwidth availability.

The wireless connectivity will be an optional offering, an alternative to fiber optic network connectivity, and will provide lower latency. It will not provide a new market data product, but merely an alternative means of connectivity.

Clients will place orders for the wireless connectivity via the CoLo Console[5] and would be subject to a one-year minimum lock-in period. The lock-in feature, which is common practice for co-location offerings, will ensure that the Exchange can recoup the substantial investment required to establish the wireless system. As an incentive to clients, BX will waive the first month's MRC. Clients will continue to be charged by BX for the market data received. No changes in these charges will occur as a result of this proposed offering.

BX will perform substantial network testing prior to offering the service for a fee to members. After this ''beta'' testing period, upon initial roll-out of the service, clients will be offered the service for a fee, and on a rolling basis, the Exchange will enable new clients to receive the feed(s) for a minimum of 30 days before incurring any monthly recurring fees. The wireless network will continue to be closely monitored and the clients informed of any issues. Similar to receiving market data over fiber optic networks, the wireless network can encounter delays or outages due to equipment issues. As wireless networks may be affected by severe weather events, clients will be expected to have redundant methods to receive this market data and will be asked to attest to having alternate methods or establishing an alternate method in the near future when they order this service from the Exchange.

This new data feed delivery option will be available to all clients of the data centers, and is in response to industry

[3] BX cannot preclude minor latency variances in delivery of BX TotalView in the third-party data centers to individual clients because it does not control the cross-connects in those centers; however, the microwave connectivity will provide the same latency to all clients' MITCH Wave Ports and offers an improvement in latency over fiber optic network connectivity.

[4] *See* Exchange Act Release No. 68735 (January 25, 2013); 78 FR 6842 (January 31, 2013) (order approving SR–NASDAQ–2012–119).

[5] The ''CoLo Console'' is a web-based ordering tool BX offers to enable members to place co-location orders.

demand, as well as to changes in the technology for distributing market data. Clients opting not to pay for the wireless connectivity will still be able to receive market data via fiber optics and standard telecommunications connections, as they do currently, and under the same fees. Receipt of trade data via wireless technology is completely optional. In addition, clients can choose to receive market data via other third-party vendors (Extranets or Telecommunication vendors) via fiber optic networks or wireless networks.

Competition for market data distribution is considerable and the Exchange believes that this proposal clearly evidences such competition. The Exchange is offering a new wireless connectivity option and remote wave ports to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change. They are incremental to existing offerings, entirely optional, and are geared towards attracting new customers, as well as retaining existing customers.

The proposed fees are based on the cost to BX of installing and maintaining the wireless connectivity imposed by the vendor and the Exchange and on the value provided to the customer, which receives low latency delivery of the data feed. The costs associated with the wireless connectivity system are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation, and testing. The fees also allow BX to make a profit, and reflect the premium received by the clients in terms of lower latency over the fiber optics option. Clients can choose to build and maintain their own wireless networks or choose their own third party network vendors but the upfront and ongoing costs will be much more substantial than this Exchange wireless offering.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and with Sections 6(b)(4) and (b)(5) of the Act,[7] 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 designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading activities of those members who believe that co-location enhances the efficiency of their trading. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of such members.

A co-location customer may obtain a similar service by contracting with a wireless service provider to install the required dishes on towers near the data centers and pay the service provider to maintain the service. However, the cost involved in establishing service in this manner is substantial and could result in uneven access to wireless connectivity. The Exchange's proposed fees will allow these clients to utilize wireless connectivity and obtain the lower latency transmission of data from BX that is available to others, at a reasonable cost.

Moreover, the Exchange believes the proposed fees for wireless connectivity to BX market data are reasonable because they are based on the Exchange's costs to cover hardware, installation, testing and connection, as well expenses involved in maintaining and managing the enhanced connection imposed by the vendor and the Exchange. The proposed fees allow the Exchange to recoup these costs and make a profit, while providing customers the ability to reduce latency in the transmission of data from BX to third party data centers, and reduce the cost to them that would be involved if they build or buy their own wireless networks. The Exchange believes that the proposed fees are reasonable in that they reflect the costs of the connection and the benefit of the lower latency to clients.

The Exchange believes the proposed wireless connectivity fee is equitable and non-discriminatory in that all Exchange members that voluntarily select this service option will be charged the same amount for the same services. As is true of all co-location services, all co-located clients have the option to select this voluntary connectivity option, and there is no differentiation among customers with regard to the fees charged for the service.

The Exchange's proposal is also consistent with the requirement of Section 6(b)(5) of the Act that Exchange rules be designed to promote just and equitable principles of trade 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal is consistent with these requirements insomuch as it makes available to market participants, at a reasonable fee and on a non-discriminatory basis, access to low latency means of receiving market data feeds.

Initially, BX will perform substantial network testing prior to making the service available to members. After this testing period, the wireless network will continue to be closely monitored and maintained by the vendor and the client will be informed of any issues. Additionally, during the initial roll-out of the service and on a rolling basis for future clients, the Exchange will enable clients to test the receipt of the feed(s) for a minimum of 30 days before incurring any monthly recurring fees. Similar to receiving market data over fiber optic networks, the wireless network can encounter delays or outages due to equipment issues. As wireless networks may be affected by severe weather events, clients will be expected to have redundant methods to receive this market data and will be asked to attest to having alternate methods or establishing an alternate method in the near future when they order this service from the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, this proposal will promote competition for distribution of market data by offering an optional and innovative product enhancement. Wireless technology has been in use for decades, is available from multiple providers, and may be adopted by other exchanges that decide to offer microwave connectivity for delivery of market data. As discussed above, the Exchange believes that fees for co-location services, including those proposed for microwave connectivity, are constrained by the robust competition for order flow among

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

exchanges and non-exchange markets, because co-location exists to advance that competition. Further, excessive fees for co-location services, including for wireless technology, would serve to impair an exchange's ability to compete for order flow rather than burdening competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that the proposal will promote competition for distribution of market data by offering an optional and innovative product enhancement and is in response to requests from clients that wish to utilize the technology. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest so that BX can immediately offer the remote Multi-cast ITCH Wave Ports to clients that believe it can enhance the efficiency of their trading.[10] The Commission also notes that it approved a similar Nasdaq offering for Nasdaq clients colocated at third party data centers to receive Nasdaq TotalView ITCH market data.[11] Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of 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–BX–2014–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2014–005. 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 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–2014–005, and should be submitted on or before March 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04793 Filed 3–4–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] *See* Exchange Act Release No. 68735 (January 25, 2013); 78 FR 6842 (January 31, 2013) (order approving SR–NASDAQ–2012–119).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71627; File No. SR–OCC–2014–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning Amendments to the Charters for the Membership/Risk Committee, Audit Committee and Performance Committee of OCC's Board of Directors

February 27, 2014.

I. Introduction

On January 2, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2014–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on January 22, 2014.[3] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 71311 (January 15, 2014), 79 FR 3653 (January 22, 2014).

II. Description

Pursuant to the proposed rule change, as approved, OCC is amending its charters for the Membership/Risk Committee (''MRC Charter''), Audit Committee (''AC Charter'') and Performance Committee (''PC Charter'') (collectively, ''Committee Charters'') of OCC's Board of Directors (''Board'').

Changes Common to the MRC, AC, and PC

OCC is amending the Committee Charters [4] to more clearly set forth certain uniform administrative functions to provide that: (i) Each committee chair is responsible for ensuring that important issues discussed at committee meetings are reported timely to the Board; (ii) each committee chair shall determine if minutes of executive sessions are to be maintained, taking into consideration the sensitivity of the matters discussed and the possibility that candor might be limited if minutes are maintained; (iii) each committee confirm annually that all responsibilities outlined in its Committee Charter have been carried out; and (iv) each committee evaluate its performance, and the performance of its individual members, on a regular basis and provide results of such assessment to the Governance Committee (''GC'') for review. As described in more detail below, OCC is also amending the Committee Charters to reflect certain changes specific to the charters of MRC, AC, and PC, respectively.

Changes Specific to the Committee

Membership/Risk Committee

Section I of the MRC Charter states, in relevant part, that the Board established the MRC to assist the Board in overseeing OCC's policies and processes for identifying and addressing strategic, operational, and financial risks. OCC is amending the MRC Charter to more clearly provide for the MRC's oversight of the Chief Risk Officer (''CRO'') activities by requiring that the MRC: (i) Meet at least annually with the CRO and other corporate officers deemed appropriate in separate executive sessions; (ii) decide whether to approve management's recommendation to appoint or replace the CRO; (iii) assess the performance of the CRO and the Enterprise Risk Management (''ERM'') Department; (iv) oversee the structure, staffing and resources of the ERM Department; (v) decide whether to approve any CRO annual compensation or salary adjustments, but delegate to the MRC Chair the ability to modify the approved amount as a result of the MRC Chair's participation in the annual meeting of the PC; (vi) review and recommend OCC's ''Risk Appetite Statement'' [5] for annual Board approval; and (vii) review and monitor OCC's risk profile for consistency with OCC's ''Risk Appetite Statement.''

Audit Committee

Section I of the AC Charter states, in relevant part, that the Board established an AC to assist the Board in overseeing OCC's financial reporting process, OCC's system of internal control, and OCC's auditing, accounting, and compliance processes. OCC is amending the AC Charter to more clearly provide that the AC: (i) Monitor and evaluate the independent accountant's qualifications, performance, and independence and, based upon such evaluations, recommend the independent accountant's appointment or dismissal; [6] (ii) resolve any disagreements between management and the independent accountant regarding financial reporting; and (iii) review reports obtained from and prepared by the independent accountant to evaluate the independent accountant's qualifications, performance, and independence.

OCC is also amending the AC Charter to clarify the committee's duties and responsibilities with respect to OCC's Internal Audit Department by requiring that the AC: (i) Review and approve the Internal Audit Department Charter to ensure that there are no unjustified scope restrictions or limitations placed on the Internal Audit Department; (ii) decide whether to approve management's recommendation to appoint or replace the Chief Audit Executive (''CAE''); (iii) review the Internal Audit Department process for establishing the risk-based annual internal audit plan and monitor progress against the plan; (iv) review reports and other communications prepared by the Internal Audit Department and inquire of management regarding steps taken to deal with items raised; (v) assess the performance of the CAE and Internal Audit Department; (vi) decide whether to approve the CAE's annual compensation, but delegate to the AC Chair the ability to modify the approved amount as a result of the MRC Chair's participation in the annual meeting of the PC; and (vii) oversee the structure, staffing and resources of the Internal Audit Department.

In addition, OCC is amending the AC Charter to provide that the Internal Audit Department may utilize co-sourcing service providers.[7] Specifically, the amended rule change, as approved, allows the AC to delegate authority to the CAE to: (i) Hire internal audit co-sourcing service providers, on an as needed basis, to review particular areas of OCC, augment resources available within the Internal Audit Department, or for any other practical purpose; (ii) review the performance of the internal audit co-sourcing service providers; (iii) exercise final approval on the appointment, retention, or discharge of the audit firm; and (iv) approve the scope of services to be performed by the internal audit-co sourcing service provider.

Finally, OCC is amending the AC Charter to provide that the AC will meet at least annually with management, the Chief Compliance Officer, the CAE, and the independent accountants, in separate executive sessions, to discuss any matters that either side believes warrants private discussion.

Performance Committee

OCC is amending the PC Charter to require, among other things, that: (i) The PC Chair meet at least annually in private session with the GC Chair to discuss the performance of key officers; (ii) the PC meet at least annually with the Chief Executive Officer and any other corporate officers deemed appropriate by the PC to discuss and review key officers' performance and compensation levels; (iii) the PC meet annually to determine compensation levels of key officers; [8] (iv) the PC Chair recuse himself from discussion of his individual compensation, benefits, or perquisites, except as otherwise requested by the other members of the Committee; and (v) the functions and responsibilities of the PC be amended to also include review performance and compensation of key employees, to

[4] The original versions of the Committee Charters were approved on December 6, 2013. *See* Securities Exchange Act Release No. 71022 (December 6, 2013), 78 FR 75659 (December 12, 2013) [File No. SR–OCC–2013–17].

[5] The ''Risk Appetite Statement'' sets the standards on which all of OCC's risk identification, measurement, monitoring, and testing are based. OCC believes that the OCC's Risk Appetite Statement is a key component of its enterprise risk management program.

[6] OCC believes that this change will align with best practices and reflect the AC's oversight of the external auditor to better assure independence in connection with the performance of the external auditors' function and services.

[7] Co-sourcing service providers are consultants hired on a temporary basis to assist with a particular project when OCC's Internal Audit Department staff is otherwise fully engaged and requires additional resources or skill sets to complete a project on a timely basis.

[8] The AC and MRC Chairs shall be invited to attend such meeting to discuss the performance of the CAE and CRO, respectively, and to advise on the compensation levels approved for such officers as provided for in each Committee's Charter.

appoint and remove members of the Administrative Committee and to oversee the Administrative Committee, confirm annually that all charter responsibilities have been carried out, and to evaluate the committee's and PC members' performance on a regular basis.

III. Discussion

Section 19(b)(2)(C) of the Act [9] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act [10] requires that the rules of a clearing agency that is registered with the Commission be designed to, among other things, protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [11] because the amendments to the Committee Charters should clarify the role and responsibilities of each of the Committees within OCC's governance structure. Furthermore, consistent with Rule 17Ad–22(d)(8) [12] under the Act, the amendments to the Committee Charters should help ensure that OCC has governance arrangements that are clear and transparent, support the objectives of OCC's owners and participants, and promote the effectiveness of OCC's risk management procedures.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [13] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–OCC–2014–01) be and hereby is *approved.*[15]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary .

[FR Doc. 2014–04796 Filed 3–4–14; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(2)(C).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] *Id.*

[12] 17 CFR 240.17Ad–22(d)(8).

[13] 15 U.S.C. 78q–1.

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71631; File No. SR–NYSEArca–2014–02]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Amending Its Rules in Order To Clarify the Applicability and Functionality of Certain Order Types on the Exchange

February 27, 2014.

I. Introduction

On January 8, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules in order to clarify the applicability and functionality of certain option order types on the Exchange. The proposed rule change was published for comment in the **Federal Register** on January 21, 2014.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend Rule 6.62 in order to clarify the applicability and functionality of certain option order types. The Exchange states that it is not proposing to change or alter any obligations, rights, policies or practices enumerated within its rules. Rather, according to the Exchange, this proposal is designed to reduce the potential for investor confusion as to the functionality and applicability of certain option order types presently available on the Exchange.[4]

The Exchange's proposed revisions to Rule 6.62 would provide greater detail as to the existing functionality of certain order types, including:

- *Rule 6.62(a)—Market Order.* The Exchange has proposed to amend Rule 6.62(a) to specify that: (1) Market Orders entered before the opening of trading will be eligible for trading during the Opening Auction Process; (2) Market Orders entered during Core Trading Hours will be rejected if, at the time the order is received, there is no National Best Bid (''NBB'') and no National Best Offer (''NBO'') (collectively, ''NBBO'') disseminated by the Options Pricing Reporting Authority (''OPRA'') for the relevant option series; and (3) if at the time the Exchange receives a Market Order to buy (sell) there is an NBB (NBO) but no NBO (NBB) being disseminated, the Market Order will be processed pursuant to Rule 6.60(a).[5]
- *Rule 6.62(d)(1)–(2)—Stop Orders and Stop Limit Orders.* The Exchange has proposed to amend Rule 6.62(d)(1)–(2) to specify that it will reject Stop Orders and Stop Limit Orders to buy entered with a stop price below the bid at the time the order is entered and Stop Orders and Stop Limit Orders to sell entered with a stop price above the offer at the time the order is entered.[6]
- *Rule 6.62(o)—NOW Order.* The Exchange has proposed to clarify that a NOW Order that is not marketable against the NBBO when submitted to the Exchange will be rejected.[7]
- *Rule 6.62(t)—Liquidity Adding Order.* The Exchange has proposed to clarify that this order type may only be entered with a Day time-in-force modifier.[8]

The Exchange's additional proposed revisions to Rule 6.62 would be three-fold. First, the Exchange has proposed to specify in Rules 6.62(d)(5), 6.62(g) and 6.62(i) that Stock Contingency Orders, One-cancels-the-other Orders, and Single Stock Future/Option Orders, respectively, are only eligible for open outcry trading.[9] Second, the Exchange has proposed to decommission the functionality supporting the Inside Limit Order defined in Rule 6.62(c) and the Tracking Order defined in Rule 6.62(d)(6) due to a lack of demand for these order types. The Exchange states that it does not intend to re-introduce these order types in the future, and thus proposes to delete the text of these

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71293 (January 14, 2014), 79 FR 3429 (''Notice'').

[4] *See* Notice, 79 FR at 3429.

[5] *See* proposed Rule 6.62(a); *see also* Notice, 79 FR at 3430.

[6] *See* proposed Rules 6.62(d)(1)–(2); *see also* Notice, 79 FR at 3430. The Commission notes that proposed Rule 6.62(d)(1)–(2) accurately sets forth this additional specification, but the Exchange's description of this rule change in the purpose section of its filing refers to stop prices above the bid or below the offer (instead of below the bid or above the offer) triggering rejection.

[7] *See* proposed Rule 6.62(o); *see also* Notice, 79 FR at 3430.

[8] *See* proposed Rule 6.62(t); *see also* Notice, 79 FR at 3430.

[9] *See* proposed Rules 6.62(d)(5), 6.62(g) and 6.62(i); *see also* Notice, 79 FR at 3430.

rules.[10] Third, the Exchange has proposed to correct typographical errors in Rules 6.62(r) and 6.62(t), which define the Opening Only Order and Liquidity Adding Order, respectively.

The Exchange has stated that it plans to issue a Trader Update announcing the changes proposed by this rule filing upon approval of the filing.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is consistent with, and would further the objectives of, Section 6(b)(5) of the Act because it would add transparency and clarity to the Exchange's rules by enhancing the descriptions of certain order type functionality, deleting obsolete or outdated rules, and correcting inaccurate language. The Exchange also believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the order types available for trading on the Exchange.

Specifically, the Exchange believes that clarifying the definitions of Market Orders, Stop Orders, NOW Orders and Liquidity Adding Orders removes impediments to and perfects the mechanism of a free and open market by helping to ensure that investors better understand the functionality of these order types. Additionally, the Exchange believes that specifying that Stock Contingency Orders, Single Stock Future/Option Orders and One-cancels-the-other Orders are only for trading in open outcry will help to protect investors and the public interest by reducing the potential for confusion when routing orders to NYSE Arca. Lastly, the Exchange believes that deleting the definitions applicable to Inside Limit Orders and Tracking Orders provides clarity to Exchange rules by eliminating outdated and obsolete functionality.

The Commission notes that the instant proposal does not add any new functionality but instead enhances and clarifies the descriptions of the option order type functionality currently available on the Exchange. The Exchange's proposed revisions would provide greater detail as to the operation of certain option order types, including the circumstances in which certain order types are rejected, order types and modifiers that are compatible or incompatible with each other, and the eligibility of certain order types for only open outcry trading. Further, the Exchange proposes to update its rules by deleting obsolete order type provisions. The Commission believes that these proposed changes are reasonably designed to provide greater specificity, clarity and transparency with respect to the order type functionality available on the Exchange, and therefore should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSEArca–2014–02) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04799 Filed 3–4–14; 8:45 am]

BILLING CODE 8011–01–P

[10] *See* Notice, 79 FR at 3430.

[11] *Id.* at 3431.

[12] 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).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71629; File No. SR–FINRA–2013–039]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc; Notice of Filing of Amendment No. 1 to Proposed Rule Change To Clarify the Classification and Reporting of Certain Securities to FINRA

February 27, 2014.

I. Introduction

On September 16, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 clarify the classification and reporting of certain securities to FINRA. The proposed rule change was published for comment in the *Federal Register* on September 30, 2013.[3] The Commission received two comments on the proposal.[4] On November 12, 2013, FINRA granted the Commission an extension of time to act on the proposal until December 29, 2013.

On December 24, 2013, the Commission instituted proceedings to determine whether to disapprove the proposed rule change.[5] On February 12, 2014, FINRA submitted Amendment No. 1 to respond to the comment letters and amend the proposed rule change, as described below in Item II, which Item has been prepared by FINRA. The Commission is publishing this notice to solicit comment from interested persons on the proposed rule change, as modified by Amendment No. 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 1

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70482 (September 23, 2013), 78 FR 59995 (September 30, 2013) (''Notice'').

[4] *See* Letters to the Commission from Sean Davy, Managing Director, Capital Markets, SIFMA, dated October 21, 2013 (''SIFMA Letter''); and Manisha Kimmel, Executive Director, Financial Information Forum, dated October 31, 2013 (''FIF Letter'').

[5] *See* Securities Exchange Act Release No. 71180 (December 24, 2013), 78 FR 79716 (December 31, 2013).

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA trade reporting rules generally require that members report over-the-counter (''OTC'') transactions in debt securities that are ''TRACE-Eligible Securities'' [6] and equity securities to FINRA.[7] FINRA Rule 6622 (Transaction Reporting) requires that members report OTC transactions in ''OTC Equity Securities'' [8] to the ORF and the FINRA Rule 6700 Series requires members to report transactions in TRACE-Eligible Securities to TRACE.

FINRA recently has received inquiries regarding the appropriate classification of certain ''hybrid'' securities for trade reporting purposes. FINRA is aware that as new securities are created and issued, in some cases, the newer hybrid iteration, although derived from a traditional security, may be increasingly complex, and may have both debt and equity-like features. These hybrid securities are frequently designed to straddle both classifications for a variety of purposes, including the tax treatment applicable to issuers and recipients when distributions are made (or not made) to holders of the security, and the treatment of the principal as capital for issuers subject to capital requirements. As such, determining whether these hybrid securities should be treated as an OTC Equity Security or a TRACE-Eligible Security for purposes of trade reporting to the appropriate FINRA facility has become less clear.

Given the complexity of these hybrid securities, FINRA proposed an interpretation regarding the classification and reporting of two categories of hybrid securities (capital trust securities (also referred to as trust preferred securities) and certain depositary shares) to clarify the appropriate trade reporting facility to which such securities should be reported.[9] In addition, FINRA proposed a policy to address the treatment of securities that are currently being reported to a facility that is not the designated facility under this interpretation.

Comments Received

On September 30, 2013, the SEC published the proposed rule change for comment in the **Federal Register**.[10] The SEC received two comment letters in response to the proposed rule change, both of which raised concerns with certain aspects of the proposal.[11] Both commenters indicated that the vast majority of hybrid securities identified in the interpretation are traded by their members as fixed income securities.[12] In particular, SIFMA noted that hybrid securities with a par value of $1,000 or more have historically been traded and settled with a debt convention [13] as such securities traded on the basis of yield and credit quality and, similarly, investors evaluated them based on their debt-like characteristics, such as yield, time to first call, credit rating and priority in the capital structure in that they are paid after other debt but before common equity. Thus, commenters indicated that reporting such securities to TRACE better accommodates and is consistent with these debt trading conventions.

Given that these securities have historically traded and been reported as debt, the commenters raised many concerns about the significant disruption to fixed income trading work flows that would result if these securities were reported to the ORF, in light of the interdependencies among trading systems, including the operational and technology changes and costs associated therewith. Commenters highlighted a variety of potential downstream impacts of reporting depositary shares to ORF [14] and questioned whether the benefits of the proposal outweigh the costs.[15]

SIFMA raised similar concerns emphasizing that the hybrid securities market is a critical part of the capital markets, noting that many of these securities are being issued by financial institutions to satisfy equity capital requirements as part of the International Regulatory Framework for Banks developed by the Bank for International Settlements, known as Basel III. SIFMA indicated that a shift in the market practice for these securities could create investor confusion in the market. SIFMA argues that investors, institutional investors in particular, use the debt trading analytics as a critical part of their investment decisions and any change to the practice could in turn negatively impact liquidity. Further, SIFMA emphasized that there is regulatory precedent to permit the subject securities to be reported to TRACE and would be consistent with conclusions reached by the Commission in other contexts with respect to non-convertible preferred securities that may be classified or treated as debt

[6] FINRA Rule 6710(a) defines ''TRACE-Eligible Security'' to include ''a debt security that is United States ('U.S.') dollar-denominated and issued by a U.S. or foreign private issuer, and, if a 'restricted security' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A.''

[7] *See* FINRA Rules 6282 (relating to the Alternative Display Facility (''ADF'')), 6380A (relating to the FINRA/Nasdaq Trade Reporting Facility), 6380B (relating to the FINRA/NYSE Trade Reporting Facility), 6622 (relating to the OTC Reporting Facility (''ORF'')) and 6730 (relating to the Trade Reporting and Compliance Engine (''TRACE'')).

[8] FINRA Rule 6420(f) defines ''OTC Equity Security'' to include ''any equity security that is not an 'NMS stock' as that term is defined in Rule 600(b)(47) of SEC Regulation NMS; provided, however, that the term 'OTC Equity Security' shall not include any Restricted Equity Security.'' FINRA Rule 6420(k) defines ''Restricted Equity Security'' to mean ''any equity security that meets the definition of 'restricted security' as contained in Securities Act Rule 144(a)(3).''

[9] The proposed interpretation applies solely to a hybrid security that is not listed on an equity facility of a national securities exchange. *See, e.g., FINRA Trade Reporting Notice,* February 22, 2008 (FINRA applied TRACE reporting requirements, distinguishing between listed and unlisted securities, and required members to report transactions in unlisted convertible debt and unlisted equity-linked notes to TRACE, and OTC transactions in convertible debt and equity-linked notes listed on an equity facility of a national securities exchange to an appropriate FINRA equity trade reporting facility for NMS Stocks (the ADF or a trade reporting facility (''TRF'')). For purposes of this proposed rule change, the term ''listed on an equity facility of a national securities exchange'' means a security that qualifies as an NMS stock (as defined in Rule 600(b)(47) of Regulation NMS under the Act) as distinguished from a security that is listed on a bond facility of a national securities exchange. *See* 17 CFR 242.600(b)(47).

[10] *See* Securities Exchange Act Release No. 70482 (September 24, 2013), 78 FR 59995 (September 30, 2013) (Notice of Filing of Proposed Rule Change To Clarify the Classification and Reporting of Certain Securities to FINRA; File No. SR–FINRA–2013–039).

[11] *See* Letter from Sean Davy, Managing Director, Capital Markets, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, SEC, dated October 21, 2013 (''SIFMA'') and letter from Manisha Kimmel, Executive Director, Financial Information Forum, to Elizabeth M. Murphy, Secretary, SEC, dated October 31, 2013 (''FIF'').

[12] *See* SIFMA and FIF.

[13] In general, trading with a debt convention includes counterparties discussing the notional amount of the security, its price and the carried accrued interest that is expressed separately from the price. However, SIFMA acknowledged that securities with par value less than $1,000 generally trade as equity securities in an equity format.

[14] For example, FIF noted potential impact relating to Section 31 fees, TAF fees, Electronic Blue Sheets, INSITE reporting, short interest, beneficial ownership, order ticket, confirmations, corporate actions and tax treatment.

[15] *See* FIF. SIFMA also encouraged FINRA to consider more cost effective alternatives, including making changes to its trade reporting systems that would accomplish its goals without imposing undue burdens on the market.

securities.[16] SIFMA also expressed its belief that the proposal does not address the full spectrum of hybrid securities and the classification should provide further clarity and guidance in anticipation of further market developments. Regardless of the ultimate reporting venue, SIFMA indicated at least one year is needed to implement any necessary changes.

Response to Commenters

After careful consideration of the comments, FINRA acknowledges that the appropriate classification of hybrid securities is a complex analysis that has important consequences. FINRA agrees with the commenters that hybrid securities, in particular securities with a liquidation preference of $1,000 or more, do indeed have significant debt-like characteristics, as noted by SIFMA, that were created to ''mix and match both debt and equity characteristics to achieve the particular tax, regulatory capital and rating agency treatment needs of the issuer'' and ''is an important source of bank regulatory capital.'' As such, given the multi-faceted nature of these products, FINRA believes all aspects of these products should be given consideration in evaluating the proper classification for trade reporting purposes. In this regard, FINRA further discussed the proposal with several institutional investor representatives who also agreed with the concerns raised by commenters of potential unintended downstream impact if these securities were not reported to TRACE.

Given the consistent view throughout the industry, FINRA believes it is appropriate to treat these securities as debt for purposes of trade reporting. Accordingly, FINRA proposes to modify its original interpretation to provide that, in addition to capital trust and trust preferred securities, the term TRACE-Eligible Security includes: (1) a depositary share having a liquidation preference of $1,000 or more (or a cash redemption price of $1,000 or more) that is a fractional interest in a non-convertible,[17] preferred security and is not listed on an equity facility of a national securities exchange (''hybrid $1,000 depositary share''); and (2) a non-convertible, preferred security having a liquidation preference of $1,000 or more (or a cash redemption price of $1,000 or more) that is not listed on an equity facility of a national securities exchange (''hybrid $1,000 preferred security''), such as a hybrid $1,000 preferred security that is offered directly to an investor or a preferred security underlying multiple hybrid $1,000 depositary shares.[18] Any such security deemed as a TRACE-Eligible Security would be excluded from the defined term OTC Equity Security.

FINRA believes that consistency in the market practice and maintaining the established securities transaction information flow to investors is important and furthers the highly developed reporting and transparency infrastructure already in place to which the marketplace and investors are accustom. FINRA believes that the TRACE system better accommodates the debt trading and reporting conventions of these securities and investors will be able to more reliably and efficiently find market information about these securities, consistent with how they access information for products that trade based on similar characteristics, e.g., yield and credit quality.

FINRA believes this amended interpretation will prevent investor confusion by allowing hybrid $1,000 depositary shares and hybrid $1,000 preferred securities to be reported to TRACE. Since the reporting determination is an important factor in driving certain downstream activities, such as clearing and settling such securities and the reporting data used by investors and other market participants, FINRA believes the proposed amended interpretation preserves the established market practice for these securities and achieves investor protection goals consistent with the debt-like nature of the security, without being unduly burdensome and requiring significant technological changes. As raised by SIFMA, FINRA also believes the revised interpretation is consistent with conclusions reached by the Commission in other contexts with respect to non-convertible preferred securities that may be classified or treated as debt securities.[19]

While it is impossible to address all future types of securities, as it frequently is a security-specific fact-based analysis, FINRA believes that the expansion of the proposed interpretation to address additional forms of hybrid securities will address a significant portion of the market and adapt to future offerings. FINRA endeavors to continue to work directly with SIFMA, FIF and all market participants to ensure consistent reporting treatment across the hybrid securities market. Further, FINRA believes the modified interpretation set forth above provides sufficient detail and guidance for members to ensure accurate reporting to the appropriate trade reporting facility.

In light of the expanded and modified interpretation discussed above, FINRA declines to extend the implementation date beyond the originally proposed maximum of 150 days following Commission approval. FINRA believes that the modified interpretation largely follows current market practice and accordingly anticipates that members will be able to comply within such timeframe.

Other Preferred Securities and Depositary Shares

All other preferred securities and depositary shares representing fractional interests in such securities except the hybrid securities identified above—hybrid $1,000 preferred securities and hybrid $1,000 depositary shares—will continue to be included in the defined term OTC Equity Security, and members must report transactions in such securities to ORF. For example, a non-convertible preferred security having a par value or liquidation preference of $25 that is not listed on an equity facility of a national securities exchange would be an OTC Equity Security under the interpretation and would be required to be reported to ORF.[20] When reporting to ORF is required, members must report in accordance with ORF requirements. For example, price should be reported as the dollar price per share and volume should be reported as the number of preferred shares traded.

[16] *See* Securities Exchange Act Release No 57621 (April 4, 2008), 73 FR 19270 (April 9, 2008) (Order Exempting Non-Convertible Preferred Securities from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934). *See also* Rule 144(a)(4) and Rule 902 of Regulation S under the Securities Act of 1933 wherein ''non-participatory preferred stock'' is included in the definition of ''debt securities''.

[17] Non-convertible means not convertible into or exchangeable for property or shares of any other series or class of the issuer's capital stock.

[18] FINRA is not modifying its previously filed interpretation regarding the treatment of capital trust securities and trust preferred securities. Specifically, the term TRACE-Eligible Security includes capital trust securities and trust preferred securities (other than a capital trust security or a trust preferred security that is listed on an equity facility of a national securities exchange) and transactions in such securities must be reported to TRACE (and not to ORF) in compliance with the applicable reporting requirements. This interpretation would apply even if the capital trust security (or a trust preferred security) was previously listed on an equity facility of a national securities exchange and reported to a FINRA equity facility, but has since been delisted. Once delisted, the security must be reported to TRACE.

[19] *See* note 14.

[20] Under this interpretation, members must request a symbol, if one has not already been assigned, for such preferred shares for ORF reporting in compliance with the applicable reporting requirements.

Hybrid Securities Currently Being Reported to ORF and TRACE

As noted in the original proposal, FINRA believes that, given the complexity of many of the securities that are the subject of this proposed rule change, it is reasonable that firms, despite their best efforts, may have reached different conclusions on where transactions in these hybrid securities should be reported. FINRA proposes that, as of the implementation date of this proposed rule change, securities that are affected by this amended proposed interpretation will be transferred, if necessary, for reporting to the appropriate trade reporting facility, and after this transfer members must report all transactions in such securities to the appropriate trade reporting facility. Members will not be required to retroactively cancel and correct any transactions in such securities previously reported to a facility that is not the designated facility under this interpretation. Thus, members will not be required to cancel and correct transactions in capital trust securities reported to the ORF or transactions in preferred securities and depositary shares reported to TRACE (excluding hybrid $1,000 preferred securities and hybrid $1,000 depositary shares) prior to the implementation date of this proposed rule change.[21] However, if a firm reported a transaction to the facility designated in this proposed interpretation, but did not report in accordance with the applicable trade reporting requirements of that facility (*e.g.,* a firm reported a transaction to ORF, but inaccurately reported the price or size as if reporting to TRACE), the firm will be required to cancel and re-report such transactions accurately.

FINRA will publish the interpretation and its implementation date in a *Regulatory Notice* no later than 60 days following Commission approval. The implementation date will be no later than 90 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[22] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that by clarifying the classification of certain hybrid securities that are not listed on an equity facility of a national securities exchange for reporting purposes, the proposed rule change will reduce market and investor confusion. In addition, FINRA believes that the proposed rule change will improve transparency significantly because members will report transactions in the same security using a uniform set of conventions and to the same facility (*i.e.,* the ORF or TRACE). This will allow investors and other market participants to better compare transaction pricing and the quality of their executions, which promotes just and equitable principles of trade, deters fraudulent and manipulative acts and practices in the market for such securities, and furthers the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Members that are required currently to report transactions in hybrid securities will continue to be subject to transaction reporting requirements and will be provided clarity as to which facility such hybrid securities should be reported, which will promote uniformity and consistency in trade reporting within these categories of products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On September 30, 2013, the Commission published the proposed rule change for comment in the **Federal Register**.[23] The comment period closed on October 21, 2013. The Commission received two comment letters in response to the proposed rule change.[24] On December 24, 2013, the Commission published an order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[25] to determine whether to disapprove the proposed rule change.[26] No other comments were received by the Commission. A summary of the comments received and FINRA's response are provided above in Item 2 of this filing.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2013–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–039. 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 changes that are filed with the

[21] Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. *See* 15 U.S.C. 78ee. FINRA obtains its Section 31 fees and assessments from its membership, in accordance with Section 3 of Schedule A to the FINRA By-Laws. The transactions that are assessable under Section 3 of Schedule A to the FINRA By-Laws are reported to FINRA through one of FINRA's equity trade reporting facilities: the ORF, the ADF, or a TRF. As expressly stated in the Act, sales of bonds, debentures, or other evidence of indebtedness (debt securities) are excluded from Section 31 of the Act. *See* 15 U.S.C. 78ee(b). Because of this exclusion under Section 31 of the Act, transactions reported to TRACE are not subject to the regulatory transaction fee under Section 3 of Schedule A to the FINRA By-Laws. To determine whether a non-exchange listed security is an equity security or a debt security for purposes of assessing the regulatory transaction fee, FINRA relies on the facility to which the transaction is reported. If the transaction is reported to the ORF, the transaction is treated as one involving an equity security and is subject to the regulatory transaction fee. If the transaction is reported to TRACE, the transaction is treated as one involving a debt security and thus is not subject to the regulatory transaction fee. *See Regulatory Notice* 08–72 (December 2008).

[22] 15 U.S.C. 78*o*–3(b)(6).

[23] *See* note 8.

[24] *See* note 9.

[25] 15 U.S.C. 78s(b)(2)(B).

[26] *See* Securities Exchange Act Release No. 71180 (December 24, 2013), 78 FR 79716 (December 31, 2013) (Order Instituting Proceedings to Determine Whether to Disapprove Proposed Rule Change to Clarify the Classification and Reporting of Certain Securities to FINRA.

Commission, and all written communications relating to the proposed rule changes 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 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 publicly available. All submissions should refer to File Number SR–FINRA–2013–039 and should be submitted on or before March 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04797 Filed 3–4–14; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71622; File No. SR–EDGX–2014–02]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

February 27, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Amend Flag RC, which routes to the National Stock Exchange, Inc. (''NSX'') and adds liquidity; and (ii) make an administrative change to the definition of Total Consolidated Volume (''TCV''). The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) Amend Flag RC, which routes to the NSX and adds liquidity; and (ii) make an administrative change to the definition of TCV.

Flag RC

In securities priced at or above $1.00, the Exchange currently provides a rebate of $0.0026 per share for Members' orders that yield Flag RC, which routes to the NSX and adds liquidity. The Exchange proposes to amend its Fee Schedule to replace this rebate with a fee of $0.0018 per share for Members' orders that yield Flag RC. The proposed change represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is charged for routing orders that add liquidity to NSX when it does not qualify for a volume tiered reduced fee. The proposed change is in response to NSX's February 2014 fee change where the NSX replaced its rebate of $0.0026 per share with a fee of $0.0018 per share for orders that add liquidity on the NSX.[4] When DE Route routes to and adds liquidity on the NSX, it will be charged a standard rate of $0.0018 per share.[5] DE Route will pass through this rate on NSX to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

TCV Definition

On December 9, 2013, the Exchange amended its Fee Schedule to exclude odd lot transactions from the definition of TCV, which is used to determine whether a Member is eligible for certain pricing tiers, through January 31, 2014.[6] Prior to December 9, 2013, an odd lot transaction, which is generally an execution of less than 100 shares,[7] was not reported to the consolidated tape. Therefore, the Exchange did not include odd lot transactions in its calculation of TCV.[8] The proposal was designed to allow Members additional time to adjust to the potential impact of including odd lot transactions within consolidated volumes.

Beginning on February 1, 2014, the Exchange began to include odd lots in

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[4] *See* NSX, Information Circular 14–017, Amendments to the NSX Fee and Rebate Schedule Effective on February 18, 2014, *http://www.nsx.com/resources/content/7/documents/InformationCircular14-017.pdf.*

[5] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on NSX, its rate for Flag RC will not change.

[6] *See* Securities Exchange Act Release No. 71058 (December 12, 2013), 78 FR 76682 (December 18, 2013) (SR–EDGX–2013–46).

[7] *See* Exchange Rule 11.6.

[8] *See* Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR–CTA–2013–05) (Order Approving the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan). *See also* Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7–24–89) (Order Approving Amendment No. 30 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis). *See also* Securities Exchange Act Release No. 70898 (November 19, 2013) (SR–NYSE–2013–75). *See also* announcements regarding December 9, 2013 implementation date, *available at https://cta.nyxdata.com/cta/popup/news/2385* and *http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-11.* If the inclusion of odd lot transactions in the consolidated tape is delayed to a date after December 9, 2013, the manner of inclusion or exclusion of odd lot transactions described in this proposal for purposes of billing on the Exchange would similarly take effect on such later date.

the TCV calculation after a nearly two month transition period. Therefore, the Exchange proposes to update the definition of TCV in its Fee Schedule to remove, ''excluding odd lots through January 31, 2014'' and no longer reflect that odd lots are excluded from the calculation of TCV. As amended, the definition of TCV would read as follows: ''the volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month in which the fees are calculated.''

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on February 18, 2014.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Flag RC

The Exchange believes that its proposal to replace the pass through rebate of $0.0026 per share for Members' orders that yield Flag RC with a fee of $0.0018 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NSX through DE Route. Prior to NSX's February 2014 fee change, NSX provided its members a rebate of $0.0026 per share to add liquidity to the NSX and provided DE Route that same rebate, which DE Route passed through to the Exchange and the Exchange provided to its Members. In February 2014, NSX replaced the rebate of $0.0026 per share it provided its customers to add liquidity with a fee of $0.0018 per share.[11] Therefore, the Exchange believes that the proposed change to Flag RC to replace the rebate of $0.0026 per share with a fee of $0.0018 per share is equitable and reasonable because it accounts for the pricing change on the NSX. In addition, the proposal allows the Exchange to charge its Members a pass-through rate for orders that are routed to the NSX and add liquidity. Furthermore, the Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

TCV Definition

The Exchange believes its proposal to amend its definition of TCV is reasonable because it provides Members with greater clarity with regard to how the Exchange calculates TCV. The Exchange announced in its earlier filing amending the definition of TCV that it would begin to include odd lots in the TCV calculation on February 1, 2014, after the nearly two month transition period.[12] The Exchange believes it is reasonable to now amend its definition of TCV to clarify that odd lots are no longer excluded. The proposed amendment is intended to make the Fee Schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. The proposed rule change is also equitable and not unfairly discriminatory because it would apply to all Members uniformly.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposal amendments its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Flag RC

The Exchange believes that its proposal to pass through a fee of $0.0018 per share for Members' orders that yield Flag RC would increase intermarket competition because it offers customers an alternative means to route to NSX for the same price as entering orders on NSX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

TCV Definition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal to exclude odd lot transactions from the TCV calculation was intended to allow Members additional time to adjust to the potential impact of including odd lot transactions within consolidated volumes. The Exchange believes that the proposed non-substantive change to the definition of TCV would not affect intermarket nor intramarket competition because the change does not alter the criteria necessary to achieve the tiers nor the rates offered by the tiers. In addition, the Exchange believes that other exchanges have ceased excluding odd lot transactions from the consolidated volume calculations as of February 1, 2014.[13]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(2)[15] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] *See* NSX, Information Circular 14–017, Amendments to the NSX Fee and Rebate Schedule Effective on February 18, 2014, *http://www.nsx.com/resources/content/7/documents/InformationCircular14-017.pdf.*

[12] *See* Securities Exchange Act Release No. 71058 (December 12, 2013), 78 FR 76682 (December 18, 2013) (SR–EDGX–2013–46).

[13] *See* Securities Exchange Act Release No. 70997 (December 5, 2013), 78 FR 75432 (December 11, 2013) (SR–NYSE–2013–78) (amending its price list to exclude odd lot transactions from its consolidated average daily trading volume calculations thru January 31, 2014); *see also,* Securities Exchange Act Release No. 71140 (December 19, 2013), 78 FR 78460 (December 26, 2013) (SR–BATS–2013–063) (amending its price schedule to exclude odd lot transactions from its consolidated average daily trading volume calculations thru January 31, 2014).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2014–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2014–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2014–02, and should be submitted on or before March 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04791 Filed 3–4–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71626; File No. SR–FINRA–2013–051]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Uniform Branch Office Registration Form (Form BR)

February 27, 2014.

I. Introduction

On November 25, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change to amend the Uniform Branch Office Registration Form (''Form BR'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on December 13, 2013.[3] The Commission received three comment letters on the proposed rule change.[4] On January 21, 2013 FINRA responded to the comment letters.[5] On January 23, 2014, the Commission extended the time period within which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] This order approves the proposed rule change.

II. Description

Proposed Amendments

Form BR is used by firms to register their branch offices with FINRA, the New York Stock Exchange (''NYSE''), and participating states via the Central Registration Depository (''CRD®''). Form BR enables a firm: (1) To register a branch office, (2) amend a registration, (3) close or terminate a registration, or (4) withdraw a filing in the appropriate participating jurisdiction and self-regulatory organization (''SRO'').

In concert with a committee of regulatory and industry representatives, FINRA recently undertook a review of Form BR. As a result of this review, FINRA is proposing to amend Form BR to: (1) Eliminate Section 6 (NYSE Branch Information), which is currently applicable only to NYSE-registered firms; (2) add questions relating to space sharing arrangements and the location of books and records that are currently only in Section 6 and make them applicable to all members; (3) modify existing questions and instructions to provide more detailed selections for describing the types of activities conducted at the branch office; (4) add an optional question to identify a branch office as an ''Office of Municipal Supervisory Jurisdiction,'' as defined under the rules of the Municipal Securities Rulemaking Board (MSRB); and (5) make other technical changes to adopt uniform terminology and clarify questions and instructions (collectively, the proposed amendments to Form BR are hereinafter referred to as the ''Updated Form BR'').

Delete Section 6 while Adding Questions on Space Sharing Arrangements and Location of Books and Records. Currently only NYSE-registered firms are required to complete and update Section 6 and are the only firms that can view Section 6 on the CRD system. Section 6 of Form BR allowed NYSE to administer a pre-approval process for registration of certain branch offices that was in place at the time Form BR was implemented.[7] However, following the NASD/NYSE regulatory consolidation, in an effort to eliminate disparate regulatory standards, the NYSE amended NYSE Rule 342 to change its branch office

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[16] 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. 71027 (December 9, 2013), 78 FR 75954 (''Notice'').

[4] *See* Letter from Jason Doss, President, Public Investors Arbitration Bar Association to Elizabeth M. Murphy, Secretary, Commission, dated January 2, 2014 (''PIABA Letter''); Letter from Clifford Kirsch and Eric A. Arnold, Sutherland Asbill & Brennan LLP, on behalf of the Committee of Annuity Insurers to Elizabeth M. Murphy, Secretary, Commission, dated January 3, 2014 (''CAI Letter''); Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute to Elizabeth M. Murphy, Secretary, Commission, dated January 3, 2014 (''FSI Letter'').

[5] *See* Letter from Kosha Dalal, Associate Vice President and Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated January 21, 2014 (''FINRA Response Letter'').

[6] *See* Securities Exchange Act Release No. 71373, 79 FR 4788 (January 29, 2014)

[7] In 2005 when Form BR was implemented, NYSE Rule 342 (Offices—Approval, Supervision and Control) required approval of new branch office registrations, and NYSE Rule 343 (Offices—Sole Tenancy, Hours, Display of Membership Certificates) required approval of space sharing arrangements, before the branch office was able to conduct business.

registration requirement from a pre-approval process to a notice-filing requirement.[8] Therefore, FINRA is proposing to delete this section.[9] However, FINRA is proposing to retain questions from Section 6 relating to space sharing arrangements and the location of books and records and add them to proposed Section 4 (Branch Office Arrangements) of the Updated Form BR.

Specifically, FINRA is proposing to add a question to Section 4 of the Updated Form BR that will require members to disclose if the branch office occupies, shares space with or jointly markets with any other investment-related entity, and if the answer is yes, to provide the name of the entity.[10] In addition, FINRA is proposing to add a question to Section 4 regarding whether the books and records pertaining to the registered branch office are maintained at any location other than that branch office, the main office or office of supervisory jurisdiction (OSJ) (if applicable). If the answer is yes, a member will need to provide the address of such location and the name and telephone number of a contact person.

Modify Existing Question on ''Types of Activities''. FINRA is proposing to move questions relating to ''Types of Activities'' occurring at the branch office from Section 3 (Other Business/Names/Web sites) to Section 2 (Registration/Notice Filing/Type of Office/Activities) of the Updated Form BR and to expand the list of activity types that may be selected to: (1) Include Retail and Institutional (as types of Sales Activity), Public Finance, and Other; (2) add ''Trading'' to the existing Market Making activity; and (3) combine Investment Banking and Underwriting, which are now listed separately. In addition, FINRA is proposing to add ''Public Finance'' as an option to enable members and regulators to identify via the Updated Form BR office locations that require a Municipal Securities Principal (Series 53).

Modify Supervisor/Person-in-Charge Details. FINRA is proposing to expand the supervisor and person-in-charge details provided by firms in Section 2 of the Updated Form BR, to enable firms (at their option) to provide the ''type of activity'' associated with each on-site supervisor or person-in-charge listed.

Add Optional MSRB Branch Office of Municipal Supervisory Jurisdiction Question. FINRA is proposing to add an optional question to Section 2 to the Updated Form BR to provide FINRA members that are also registered with the MSRB a means to track their OMSJs through a standard CRD report that FINRA expects to develop following the deployment of the Updated Form BR.[11]

No Requirement to Submit Amended Forms BR by a Date Certain. FINRA is proposing that members with existing registered branch offices not be required to file an Updated Form BR for existing offices immediately upon deployment of the amended form, but will be required to provide the new information items on the Updated Form BR when the members are otherwise required to amend the form to update existing information items that have become inaccurate or incomplete. FINRA represents that it expects to evaluate the number of registered branch offices of FINRA members for which an Updated Form BR has not been filed one year after it deploys the form. If a significant number of registered branch offices has not filed the information through an amendment during that year, FINRA may consider imposing a deadline for providing the proposed new information.

III. Summary of Comment Letters and FINRA's Response

The Commission received three comment letters on the proposed rule change.[12] All three commenters expressed overall support for the intent of proposed amendments to the Form BR.[13] In particular, one commenter noted that it supports the changes to Form BR because they will make the branch office registration process more efficient and add clarity to the questions currently asked on the form.[14] Another commenter similarly stated that it supports the increased efficiency of the streamlined Updated Form BR.[15] Two commenters, however, raised concerns about specific aspects of the proposed rule change as discussed below.

A. Space Sharing Arrangements

The Updated Form BR proposes to add a question about space sharing arrangements at the branch office. Specifically, the proposed space sharing arrangements question in Section 4 of the Updated Form BR (''Question 4A'') asks ''[d]oes this branch office occupy or share space with or jointly market with any other *investment-related entity*?'' If the answer is ''yes,'' a member firm must provide the CRD number (if applicable) and name of the investment-related entity and select the type of investment-related entity. The term ''investment-related'' is defined in Section 1 (Explanation of Terms) of the Updated Form BR to mean, ''pertains to securities, commodities, banking, insurance, or real-estate (including, but not limited to, acting as or being associated with a Broker-Dealer, issuer, investment company, Investment Adviser, futures sponsor, bank or savings association).''

One commenter expressed support for the proposed space sharing arrangements question and stated, ''[i]n addition to the increased efficiency of the streamlined Updated Form BR, the inclusion of details in the proposed form as to space sharing arrangements and locations of office records provide additional important information to the investing public.''§ [16] Two commenters, however, expressed concern regarding proposed Question 4A.[17]

One commenter specifically noted that if space sharing arrangements exist at a branch office, then firms must provide the name, CRD number, and type of entity.[18] The commenter explained that for independent firms, space sharing arrangements are not an uncommon practice and may include several different ''doing business as'' (DBA) entities.[19] The commenter stated that because these different DBA businesses and entities may change frequently, it could be difficult for firms to have to monitor and update this information on Updated Form BR.[20] The commenter further noted that this information would not have been particularly burdensome for the business model of NYSE-registered firms under the current Form BR, but the proposed changes introduce challenges for independent firms.[21] The commenter stated that it does not believe that the burden of providing this

[8] *See* Securities Exchange Act Release No. 56143 (July 26, 2007), 72 FR 42453 (August 2, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2007–59).

[9] The proposed revisions will also remove references to the NYSE-specific terms from the form.

[10] The term ''investment-related'' is defined in Form BR as ''[p]ertains to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a Broker-Dealer, issuer, investment company, Investment Adviser, futures sponsor, bank, or savings association).''

[11] FINRA is proposing technical and clarifying changes to General and Specific Instructions, Explanation of Terms and Sections of the Updated Form BR. *See* Notice at 75956—75957.

[12] *See* note 4, *supra.*

[13] *See* PIABA Letter, CAI Letter, and FSI Letter.

[14] *See* FSI Letter, at 1.

[15] *See* PIABA Letter.

[16] *See* PIABA Letter, at 1.

[17] *See* FSI Letter and CAI Letter.

[18] *See* FSI Letter, at 2–3.

[19] *Id.*

[20] *Id.* at 3.

[21] *Id.*

information outweighs the benefit to investors or regulators.[22]

Another commenter also expressed concern about the information proposed to be collected under Updated Form BR Question 4A.[23] The commenter argued that FINRA has underestimated the challenges and expenses that firms such as insurance-affiliated broker-dealers would incur to disclose the insurance entities with which they have entered into space-sharing and joint marketing arrangements.[24] The commenter explained that such information is not readily maintained by insurance-affiliated and other types of member firms and collecting the information could prove to be burdensome.[25]

The commenter also stated that the Updated Form BR was unclear with regard to the scope of a broker-dealer's obligation to identify insurance entities with which it ''jointly markets'' products.[26] The commenter states that it is unclear whether the Updated Form BR is focusing solely on joint marketing and space sharing with insurance intermediaries or also insurance product issuers.[27] The commenter explained that the Updated Form BR could be read to require a firm to report ''*every* insurance product manufacturer that *each* branch office is authorized to offer if this is viewed as 'jointly marketing' the insurance products with the issuing insurer.''§ [28] The commenter questioned how this detailed information would be useful to regulators.[29]

In response to commenters' concerns regarding the information proposed to be collected with regard to space sharing arrangements, FINRA clarified that members that were not previously required to complete Section 6 will be required to provide the name, CRD number and type of investment-related entity with which a branch office occupies space on the Updated Form BR.[30] FINRA explained that the CRD system will automatically complete the CRD number field (if applicable) when the name of the investment-related entity is entered on the Updated Form BR and vice versa, and that a member firm will not be required to seek out the CRD number, if applicable, for each investment-related entity with which the branch office shares space.[31]

FINRA also addressed that commenters' concerns regarding the burden of collecting and monitoring information relating to space sharing arrangements at each branch office, particularly for member firms in the independent broker-dealer channel and stated that the concerns stem from a misunderstanding regarding the scope of the proposed question on space sharing arrangements.[32] FINRA explained that Question 4A on the Updated Form BR seeks to elicit information regarding investment-related businesses that jointly occupy office space with the branch office.[33] FINRA also clarified that the term ''jointly markets,'' as used in proposed Question 4A, does not require disclosure of each insurance product manufacturer that each branch office is authorized to offer, but instead seeks disclosure regarding other investment-related businesses that operate or jointly market business services out of the same physical space as the registered branch office.[34] FINRA explained that the question is meant to capture, for example, instances where a registered representative at a registered branch office also operates an insurance business out of that same physical location, a registered branch office location jointly occupies the physical space with an investment adviser, or the registered branch office jointly markets the location with other investment-related entities as offering services.[35] Given the more limited scope of proposed Question 4A, FINRA stated that it believes compliance burdens associated with the proposed question are more limited in nature.[36]

FINRA also stated that the question about proposed space sharing arrangements serves a valuable regulatory purpose in that it will collect basic information on space sharing arrangements that will enable regulators to conduct more focused, risk-based examinations based on a more complete understanding of the activities occurring at each branch office, and also should highlight for members the potential issues, such as, conflicts of interest, customer confusion, recordkeeping, and other concerns that may arise when one location is used for multiple business purposes.[37]

In response to commenters' assertions that it had failed to take into account the potential costs and burdens to member firms associated with proposed Question 4A, FINRA noted that current Question 4A on Form BR elicits information regarding space sharing arrangements with a bank, saving bank, saving association, credit union, or other federally insured depository institution and, therefore, member firms not previously subject to Section 6 of Form BR are nonetheless currently providing information relating to these more limited space sharing arrangements.[38] Further, FINRA noted that member firms already should have information regarding outside business activities and space sharing arrangements at each registered branch office available to enable them to engage in effective supervision and inspections of branch offices.[39]

B. Technical Comments

One commenter suggested two technical changes to proposed Section 4 of the Updated Form BR.[40] First, the commenter recommended that FINRA clarify that the CRD number requested in Section 4(a) is not the CRD Branch Number but rather the CRD number of the investment-related entity (if applicable).[41] Second, the commenter recommended that FINRA revise the column in Section 4(a) currently titled ''Name'' to ''Name of Investment Related Entity'' for additional clarity.[42]

In response to the commenter's first suggestion, FINRA advised that Section 4A elicits the CRD number of the investment-related entity (if applicable).[43] With regard to the commenter's second comment, FINRA stated that, by expressly using the term ''investment-related entity,'' in the Instructions to Section 4A, it believes that member firms should not be confused regarding the entity about which they are being asked to provide information.[44] FINRA further stated that to the extent member firms have

[22] *Id.*

[23] *See* CAI Letter.

[24] *See* CAI Letter, at 2.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *See* FINRA Response Letter, at 3–4.

[31] *Id.* at 3–4.

[32] *Id.* at 4.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.* FINRA also noted that the commenters, while expressing concerns regarding potential burdens and costs associated with the proposal, did not provide any specific estimates of compliance costs in support of their claims. *Id.* at 4–5.

[40] *See* CAI Letter, at 3.

[41] *Id.*

[42] *Id.* CAI also questioned whether the Form BR Working Group included insurance affiliated broker-dealers and fully considered how the Updated Form BR might affect such member firms' sale of insurance products. *See* CAI Letter, at p. 3. In response, FINRA explained that the Form BR Working Group consisted of representatives from a diverse cross-section of the securities industry and state regulators, including representatives from independent broker-dealer member firms, many of which sell insurance products. *See* FINRA Response Letter, at 5.

[43] *See* FINRA Response Letter, at 5.

[44] *Id.*

questions when completing this Section, FINRA staff will provide guidance as necessary, including in the regulatory notice announcing approval of the rule change.[45]

C. Implementation Timeline

One commenter expressed concern that the proposal does not impose an affirmative duty for members to submit the Updated Form BR by a date certain, and that the proposed implementation timeframe would require members to complete the proposed new questions only when a member firm's existing information on file has become inaccurate or incomplete.[46] The commenter believes that this vague standard would invite unnecessary problems and urged the Commission to require that all members submit completed Forms BR by a date certain.[47]

Another commenter requested that FINRA provide member firms a significant amount of time before the effective date of the proposed requirements to allow them to prepare for the process of collecting the newly required information.[48]

In response to these comments, FINRA stated that it believes that the proposed implementation timeline is reasonable and strikes the correct balance, especially in light of the clarification provided above regarding the scope of the proposed question on space sharing arrangements.[49] FINRA asserted that it proposed a flexible approach to implementation to limit the burden on member firms.[50] FINRA also noted, however, that it will evaluate the number of registered branch offices of FINRA member firms for which an Updated Form BR has not been filed one year after deployment and may consider imposing a deadline for providing the new information if a significant number of registered branch offices has not filed the Updated Form BR in the ordinary course.[51]

IV. Discussion and Commission Findings

After carefully considering the proposal, the comments submitted, and FINRA's response to the comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[52] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[53] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission has considered the commenters' views on the proposed rule change and believes that FINRA responded appropriately to the concerns raised. Indeed, the Commission shares FINRA's belief that the Updated Form BR will provide a more comprehensive profile of each firm's registered branch offices, which will allow regulators and firms to better understand the activities occurring at each registered branch office as well as enable firms to engage in effective supervision and inspections of branch offices and regulators to conduct more focused and effective examinations.

Commenters raised concerns regarding the burden of collecting and monitoring information relating to space sharing arrangements at each branch office, particularly for member firms in the independent broker-dealer channel,[54] however, as FINRA explained in its response, those concerns stem from a misunderstanding regarding the scope of the proposed question on space sharing arrangements, and in fact, proposed Question 4A is more narrow in scope and thus the compliance burdens associated with the proposed question are more limited in nature.[55] Although the Commission acknowledges the potential for firms covered by these new reporting requirements to incur additional compliance burdens and costs, the Commission shares FINRA's belief that any such burdens are outweighed by the overall benefits of increased transparency of the activities occurring at registered branch offices, which should enable firms to provide enhanced supervision of branch offices and strengthen their own compliance programs and regulators to conduct more focused and effective examinations. Further, the Commission echoes FINRA's belief that ''member firms should already have information regarding outside business activities and space sharing arrangements at each registered branch office available to them to engage in effective supervision and inspections of branch offices.'' [56]

One commenter was concerned that the proposal does not impose an affirmative duty for members to submit the Updated Form BR by a date certain, and that this would invite unnecessary problems.[57] The commenter urged the Commission to require that all members submit completed Forms BR by a date certain.[58] The Commission believes that FINRA adequately responded to this concern,[59] but expects FINRA to monitor the effect of this change and to consider imposing a deadline for providing the new information if a significant number of registered branch offices has not filed the Updated Form BR within a year of approval of this filing.

The Commission believes that the proposed amendments to Form BR will make the branch office registration process more efficient by eliminating duplicative provisions, eliciting additional information from all filers regarding space sharing arrangements and the location of office records, and clarifying existing questions so that regulators and firms can better understand the activities occurring at each registered branch office and focus on potential conflicts of interest, customer confusion, and other issues that can arise when a location is used for more than one business purpose.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2013–051), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04795 Filed 3–4–14; 8:45 am]

BILLING CODE 8011–01–P

[45] *Id.*

[46] The Commission notes that member firms have a continuing obligation to promptly update Form BR whenever the information becomes inaccurate or incomplete.

[47] *See* PIABA Letter, at 1.

[48] *See* CAI Letter, at 2.

[49] *See* FINRA Response Letter, at 5.

[50] *Id.*

[51] *Id.* at 5–6.

[52] 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).

[53] 15 U.S.C. 78*o*–3(b)(6).

[54] *See* note 21 *supra,* and accompanying text.

[55] *See* note 36 *supra,* and accompanying text.

[56] *See* FINRA Response letter at 4.

[57] *See* note 47 *supra,* and accompanying text.

[58] *Id.*

[59] *See* notes 49 and 50 *supra,* and accompanying text.

[60] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71625; File No. SR–FINRA–2014–009]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 5131 (New Issue Allocations and Distributions) To Provide FINRA With General Exemptive Authority

February 27, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 14, 2014, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 5131 (New Issue Allocations and Distributions) to provide FINRA with general exemptive authority under the rule.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 29, 2010, the SEC approved new FINRA Rule 5131 (New Issue Allocations and Distributions) (the ''Rule''), which addresses potential abuses in the allocation and distribution of ''new issues.''[5] The Rule also is intended to sustain public confidence in the IPO process, which is critical to the continued success of the capital markets.

Rule 5131(a) (Quid Pro Quo Allocations) prohibits quid pro quo arrangements by providing that no member or person associated with a member may offer or threaten to withhold shares it allocates of a new issue as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member.

Paragraph (b) (Spinning) addresses the practice of ''spinning,'' where a member allocates shares of a new issue to an executive officer or director of a recent, current or potential investment banking client as an award for retaining the member for investment banking business. Specifically, Rule 5131(b) generally provides that no member may allocate new issue shares to any account in which an executive officer or director of a public company or a covered non-public company has a beneficial interest: (1) if the company is currently an investment banking services client of the member or the member has received compensation from the company for investment banking services in the past 12 months; (2) if the person responsible for making the allocation decision knows or has reason to know that the member intends to provide, or expects to be retained by the company for, investment banking services within the next 3 months; or (3) on the express or implied condition that such executive officer or director, on behalf of the company, will retain the member for the performance of future investment banking services.[6]

Paragraph (c) (Policies Concerning Flipping) addresses the imposition of penalties on an associated person in cases where the purchaser of shares of a new issue engages in ''flipping.''[7] Specifically, the Rule provides that no member or person associated with a member may directly or indirectly recoup, or attempt to recoup, any portion of a commission or credit paid or awarded to an associated person for selling shares of a new issue that subsequently are flipped by a customer, unless the managing underwriter has assessed a penalty bid on the entire syndicate.[8] Thus, for example, a member may not penalize an associated person by reclaiming a sales commission where the associated person's customer sells the new issue shares within a short period of the offering, unless the managing underwriter has assessed a penalty bid on the entire syndicate.

Rule 5131(d) (New Issue Pricing and Trading Practices) generally requires: (1) the provision of specified information to the issuer regarding investor interest in the offering, including reports on indications of interest received and final allocations; (2) that lock-up agreements or other restrictions on the transfer of the issuer's shares by officers and directors of the issuer entered into in connection with a new issue also must apply to any issuer-directed shares and further must provide that the book-running lead manager will notify the issuer of the impending release or waiver and announce the impending release or waiver through a major news service.[9]

In addition, paragraph (d) provides that the agreement between the book-running lead manager and other syndicate members must require, to the extent not inconsistent with SEC Regulation M, that any shares trading at a premium to the public offering price that are returned by a purchaser to a syndicate member after secondary market trading commences must be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] Rule 5131 provides that ''new issue'' shall have the same meaning as in Rule 5130(i)(9).

[6] The spinning provision excepts allocations to certain types of accounts (the accounts described in Rule 5130(c)(1) through (3) and (5) through (10)) as well as any other account in which the beneficial interests of executive officers and directors of the company in the aggregate do not exceed 25% of such account.

[7] Rule 5131(e)(4) defines ''flipped'' as the initial sale of new issue shares purchased in an offering within 30 days following the offering date of such offering.

[8] The flipping provision also provides that, in addition to any obligation to maintain records relating to penalty bids under Rule 17a–2(c)(1) under the Act, a member shall promptly record and maintain information regarding any penalties or disincentives assessed on its associated persons in connection with a penalty bid. Rule 5131(c).

[9] This requirement does not apply to a release or waiver effected solely to permit a transfer of securities that is not for consideration and where the transferee has agreed in writing to be bound by the same lock-up agreement terms in place for the transferor. *See* Rule 5131(d)(2)(B).

used to offset the existing syndicate short position. However, if no syndicate short position exists, the member must either: (1) offer the returned shares at the public offering price to unfilled customer orders pursuant to a random allocation methodology, or (2) sell the returned shares on the secondary market and donate profits from the sale to an unaffiliated charitable organization with the condition that the donation be treated as an anonymous donation to avoid any reputational benefit to the member. Finally, Rule 5131(d)(4) (Market Orders) prohibits the acceptance of a market order for the purchase of shares of a new issue in the secondary market prior to the commencement of trading of such shares in the secondary market.

Since Rule 5131 became effective,[10] FINRA states they have received numerous operational and interpretive questions regarding the Rule's various provisions. Most recently, FINRA proposed, and the Commission approved, a new exemption for allocations to certain funds-of-funds.[11] The new exception, codified in Supplementary Material .02, was narrowly tailored to address prevalent operational burdens on members in connection with allocations to certain investment funds, even under circumstances that did not present the concerns that the spinning provision was designed to address. FINRA determined that, in this case, the concerns raised by members and other industry participants concerning the spinning provision could efficiently be addressed through a general exemption to the rule with a common set of conditions designed to provide relief, while also ensuring that allocation activity is not likely to result in the harms sought to be prevented by the Rule.

However, FINRA believes there may be other circumstances where relief is warranted on a case-by-case basis—likewise where the concerns the Rule was designed to address are not present. Therefore, FINRA believes it is appropriate to obtain the authority to, in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a person unconditionally or on specified terms from any or all of the provisions of this Rule that it deems appropriate consistent with the protection of investors and the public interest. Exemptive authority would permit members to apply for relief from Rule 5131, pursuant to the Rule 9600 Series, similar to the exemptive authority that exists for FINRA Rule 5130 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings), which shares several attributes with Rule 5131.[12] The 9600 Series sets forth the manner in which application for relief must be made, including that the applicant must provide a detailed statement of the grounds for granting the exemption. FINRA proposes that it would use its exemptive authority only in circumstances that are truly unique.

The implementation date for the proposed rule change will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that adopting an exemptive authority provision furthers these purposes by promoting capital formation and aiding member compliance efforts, while maintaining investor confidence in the capital markets by preserving the efficacy of the rule while permitting members to request an exemption from Rule 5131, where the harms the rule was designed to prevent are not present.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change results in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act in that the proposed rule permits members to apply for (and FINRA to grant) exemptive relief under Rule 5131, in exceptional and unusual circumstances, to the extent that such exemption would be consistent with the purposes of the Rule, the protection of investors and the public interest.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Not applicable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and paragraph (f)(1) of Rule 19b–4 thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2014–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2014–009. 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

[10] Most of the provisions of Rule 5131 became effective on May 27, 2011, except for paragraphs (b) and (d)(4), which became effective on September 26, 2011. *See Regulatory Notices* 10–60 (November 2010) and 11–29 (June 2011).

[11] *See* Securities Exchange Act Release No. 70312 (September 4, 2013), 78 FR 55322 (September 10, 2013) (Notice of Filing File No. SR–FINRA–2013–037); Securities Exchange Act Release No. 70957 (November 27, 2013), 78 FR 72946 (December 4, 2013) (Order Approving File No. SR–FINRA–2013–037).

Rule 5131(b) previously addressed operational burdens associated with some accounts with a large and diverse ownership base where the potential for spinning is minimal through a series of exemptions for purchasers such as mutual funds, insurance company general accounts and various employee benefit plans. *See supra* note 6. Private funds, however, are not a category of purchasers for which a general exemption exists.

[12] *See* FINRA Rule 5130(h) (Exemptive Relief).

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(1).

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2014–009 and should be submitted on or before March 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71630; File No. SR–NYSEMKT–2014–05]

Self-Regulatory Organizations; NYSE MKT LLC; Order Granting Approval of Proposed Rule Change Amending Its Rules in Order To Clarify the Applicability and Functionality of Certain Order Types on the Exchange

February 27, 2014.

I. Introduction

On January 8, 2014, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') 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 amend its rules in order to clarify the applicability and functionality of certain option order types on the Exchange. The proposed rule change was published for comment in the **Federal Register** on January 21, 2014.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to amend Rule 900.3NY in order to clarify the applicability and functionality of certain option order types. The Exchange states that it is not proposing to change or alter any obligations, rights, policies or practices enumerated within its rules. Rather, according to the Exchange, this proposal is designed to reduce the potential for investor confusion as to the functionality and applicability of certain option order types presently available on NYSE Amex Options.[4]

The Exchange's proposed revisions to Rule 900.3NY would provide greater detail as to the existing functionality of certain order types, including:

- *Rule 900.3NY(a)—Market Order.* The Exchange has proposed to amend Rule 900.3NY(a) to specify that: (1) Market Orders entered before the opening of trading will be eligible for trading during the Opening Auction Process; (2) Market Orders entered during Core Trading Hours will be rejected if, at the time the order is received, there is no National Best Bid (''NBB'') and no National Best Offer (''NBO'') (collectively, ''NBBO'') disseminated by the Options Pricing Reporting Authority (''OPRA'') for the relevant option series; and (3) if at the time the Exchange receives a Market Order to buy (sell) there is an NBB (NBO) but no NBO (NBB) being disseminated, the Market Order will be processed pursuant to Rule 967NY(a).[5]
- *Rule 900.3NY(d)(1)–(2)—Stop Orders and Stop Limit Orders.* The Exchange has proposed to amend Rule 900.3NY(d)(1)–(2) to specify that it will reject Stop Orders and Stop Limit Orders to buy entered with a stop price below the bid at the time the order is entered and Stop Orders and Stop Limit Orders to sell entered with a stop price above the offer at the time the order is entered.[6]
- *Rule 900.3NY(o)—NOW Order.* The Exchange has proposed to clarify that a NOW Order that is not marketable against the NBBO when submitted to the Exchange will be rejected.[7]

The Exchange's additional proposed revisions to Rule 900.3NY would be three-fold. First, the Exchange has proposed to specify in Rules 900.3NY(g) and 900.3NY(i) that One-cancels-the-other Orders and Single Stock Future/Option Orders, respectively, are only eligible for open outcry trading.[8] Second, the Exchange has proposed to decommission the functionality supporting the Inside Limit Order defined in Rule 900.3NY(c) and the Tracking Order defined in Rule 900.3NY(d)(5) due to a lack of demand for these order types. The Exchange states that it does not intend to re-introduce these order types in the future, and thus proposes to delete the text of these rules.[9] Third, the Exchange has proposed to correct typographical errors in the definition of the Opening Only Order in Rule 900.3NY(q).[10]

The Exchange has stated that it plans to issue a Trader Update announcing the changes proposed by this rule filing upon approval of the filing.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is consistent with, and would further the objectives of, Section 6(b)(5) of the Act because it

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71294 (January 14, 2014), 79 FR 3431 (''Notice'').

[4] *See* Notice, 79 FR at 3432.

[5] *See* proposed Rule 900.3NY(a); *see also* Notice, 79 FR at 3432.

[6] *See* proposed Rule 900.3NY(d)(1)–(2); *see also* Notice, 79 FR at 3432–33. The Commission notes that proposed Rule 900.3NY(d)(1)–(2) accurately sets forth this additional specification, but the Exchange's description of this rule change in the purpose section of its filing refers to stop prices above the bid or below the offer (instead of below the bid or above the offer) triggering rejection.

[7] *See* proposed Rule 900.3NY(o); *see also* Notice, 79 FR at 3433.

[8] *See* proposed Rules 900.3NY(g) and 900.3NY(i); *see also* Notice, 79 FR at 3433.

[9] *See* Notice, 79 FR at 3432–33.

[10] *See* proposed Rule 900.3NY(q); *see also* Notice, 79 FR at 3433.

[11] *See* Notice, 79 FR at 3433.

[12] 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).

[13] 15 U.S.C. 78f(b)(5).

would add transparency and clarity to the Exchange's rules by enhancing the descriptions of certain order type functionality, deleting obsolete or outdated rules, and correcting inaccurate language. The Exchange also believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the order types available for trading on the Exchange.

Specifically, the Exchange believes that clarifying the definitions of Market Orders, Stop Orders, and NOW Orders removes impediments to and perfects the mechanism of a free and open market by helping to ensure that investors better understand the functionality of these order types. Additionally, the Exchange believes that specifying that Single Stock Future/Option Orders and One-cancels-the-other Orders are only eligible for open outcry trading will help to protect investors and the public interest by reducing the potential for confusion when routing orders to the Exchange. Lastly, the Exchange believes that deleting the definitions applicable to Inside Limit Orders and Tracking Orders provides clarity to Exchange rules by eliminating outdated and obsolete functionality.

The Commission notes that the instant proposal does not add any new functionality but instead enhances and clarifies the descriptions of the option order type functionality currently available on the Exchange. The Exchange's proposed revisions would provide greater detail as to the operation of certain option order types, including the circumstances in which certain order types are rejected, order types and modifiers that are compatible or incompatible with each other, and the eligibility of certain order types for only open outcry trading. Further, the Exchange proposes to update its rules by deleting obsolete order type provisions. The Commission believes that these proposed changes are reasonably designed to provide greater specificity, clarity and transparency with respect to the order type functionality available on the Exchange, and therefore should help to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSEMKT–2014–05) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04798 Filed 3–4–14; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71620; File No. SR–NYSE–2014–02]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Amending Supplementary Material .20 to NYSE Rule 103 Setting Forth Net Liquid Assets Requirements for Member Organizations That Operate as Designated Market Maker Units

February 27, 2014.

I. Introduction

On January 6, 2014, the New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Supplementary Material .20 to NYSE Rule 103 (''NYSE Rule 103.20'' or the ''Rule''), which sets forth net liquid asset requirements for NYSE member organizations that operate as Designated Market Maker (''DMM'') units. The proposed rule change was published for comment in the **Federal Register** on January 27, 2014.[3] The Commission received no comments in response to the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend NYSE Rule 103.20, which sets forth net liquid assets requirements for member organizations that operate as DMM units.[4] Specifically, the Exchange proposes to change the types of financial assets and resources that would be allowed to fulfill the net liquid assets requirement of NYSE Rule 103.20 and to reorganize and add detail to the rule so that it is easier to understand.

Current Rule

Under NYSE Rule 103.20, the Exchange imposes a net liquid assets requirement on each DMM unit that typically exceeds minimum net capital requirement applicable to a broker-dealer pursuant to Rule 15c3–1 under the Act.[5] The Exchange indicates that the purpose of the rule is to reasonably assure that each DMM unit maintains sufficient liquidity to carry out its obligation to maintain an orderly market in its assigned securities in times of market stress. The Exchange established the formula for the current net liquid assets requirement in July 2011.[6] Under current NYSE Rule 103.20, each DMM unit must maintain or have allocated to it net liquid assets that are the greater of (1) $1 million or (2) $125,000 for each one-tenth of one percent (0.1%) of Exchange transaction dollar volum[7] in its registered securities that are not exchange-traded funds (''ETFs''), plus a market risk add-on of the average of the prior 20 business days' securities haircuts on its DMM dealer's positions computed pursuant to certain parts of Rule 15c3–1 under the Act (the ''Market Risk Add-on Charge'').[8] DMM units registered in ETFs must maintain the greater of $1 million or $500,000 for each ETF.[9] A DMM unit must inform NYSE Regulation immediately whenever the DMM unit is unable to comply with the requirements under the Rule.

The term ''net liquid assets'' is currently defined as excess net capital computed in accordance with the Rule 15c3–1 under the Act and NYSE Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71360 (January 21, 2014), 79 FR 4366 (''Exchange's Notice'').

[4] Pursuant to NYSE Rule 2(j), a DMM unit is defined as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE Rule 98. Pursuant to NYSE Rule 2(i), a DMM is defined as an individual member, officer, partner, employee, or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM.

[5] 17 CFR 240.15c3–1.

[6] *See* Securities Exchange Act Release No. 64918 (July 19, 2011), 76 FR 44390 (July 25, 2011) (SR–NYSE–2011–35).

[7] The term ''Exchange transaction dollar volume'' means the most recent statistical data, calculated and provided by the NYSE on a monthly basis. *See* NYSE Rule 103.20(b)(iii).

[8] The Market Risk Add-on Charge is computed using the average of the prior twenty business days' securities haircuts on its DMM dealer's positions computed pursuant to Rule 15c3–1(c)(2)(vi), exclusive of paragraphs (N), under the Act. *See* NYSE Rule 103.20(b)(i)(B).

[9] *See* NYSE Rule 103.20(b)(i)(A).

325,[10] with the certain adjustments.[11] Solely for the purpose of maintaining a fair and orderly market, NYSE Regulation may, for a period not to exceed five business days, allow a DMM unit to continue to operate despite such DMM unit's noncompliance with the provisions of the minimum requirements of NYSE Rule 103.20.

Developments Since July 2011 Rule Implementation

In the Exchange's filing, it noted many factors that have arisen since July 2011, when the Exchange originally established the formula for the net liquid asset requirements for DMM units that would support modifying the DMM units' capital requirements. These factors, which included legal and regulatory developments, market fragmentation, DMM unit end-of-day inventory positions and position duration, and the use of technology to manage market volatility are described in more detail in the Exchange's Notice.[12]

Proposed Rule Change

The Exchange proposed to amend the NYSE Rule 103.20 to expand the types of financial assets and resources permitted to be used by a DMM unit to meet the minimum ''Net Liquid Assets'' requirement without changing the aggregate level of Net Liquid Assets required for all DMM units. Specifically, the proposal would permit some of DMM unit's Net Liquid Assets [13] to be comprised of ''Liquidity,'' which would be defined to include certain undrawn committed lines of credit and actual borrowings that are used to purchase DMM unit securities, U.S. Treasuries, or reverse repurchase agreements or that are held as cash.[14] A DMM unit would be limited in the percentage of Net Liquid Assets that could be comprised of Liquidity. Specifically, a DMM unit would be required to derive at least 40% of its total required Net Liquid Assets with ''Excess Net Capital'' (defined as excess net capital computed in accordance with Rule 15c3–1 under the Act) that is dedicated exclusively to the DMM unit's activities.[15] In effect, this requirement would limit the percentage of a DMM unit's Net Liquid Assets to be comprised of no more than 60% in Liquidity.

The Liquidity that would be eligible to be included in a Net Liquid Assets would also be subject to additional requirements. For example, all Liquidity would be required to be subject to a minimum level of commitment period (of not less than 30 calendar days), and a minimum initial repayment term of not less than 30 calendar days.[16] Moreover, the Liquidity would be required to be included in a comprehensive liquidity plan that provides for stress testing of the Liquidity that must show, among other things, that there would be excess Liquidity available to the DMM unit for 30 calendar days beyond the date of the Net Liquid Assets computation.[17]

The Exchange also proposes to eliminate the separate, additional financial requirement for ETFs.[18] In justifying the elimination of these additional requirements for ETFs, the Exchange indicated that it believes that DMM units should be subject to the same Net Liquid Assets Requirements for ETFs as for other securities and notes that if a DMM unit were assigned a significant number of ETFs, the Net Liquid Assets Requirement for those ETFs would significantly exceed the Net Liquid Assets Requirement applicable to an equal number of other securities.[19]

The proposed rule change would also eliminate the Market Risk Add-on Charge,[20] as well as the adjustments to the Net Liquid Assets described above.[21] In addition, the proposal would require written approval by NYSE Regulation for any joint account involving two or more DMM units.[22]

The proposed rule change would delineate the circumstances where a DMM unit must notify NYSE Regulation, or its designee, immediately.[23] The proposal also would maintain the Exchange's flexibility to allow a DMM unit to continue to operate as a DMM for a limited period of time (of no more than five business days) when the DMM unit fails to meet the requirements of NYSE Rule 103.20, and clarifies that a DMM unit that is granted permission by NYSE Regulation to continue to operate for up to five business days may continue to operate as such thereafter if the DMM unit resolves the condition within the period of time granted by NYSE Regulation.

The Exchange believes that the proposed change would result in DMM units maintaining a robust level of capital through a means that is less burdensome for DMM units to satisfy. The Exchange notes that it would continue to assess DMM unit financial requirements and that the Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, would monitor DMM unit Net Liquid Assets on a daily basis.[24] The Exchange would notify DMM units of the implementation date of this rule change via a Member Education Bulletin.

III. Discussion of Commission Findings

After careful review and for the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act, including Section 6 of the Act,[25] and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change is consistent

[10] The Commission notes that NYSE Rule 325 was deleted and replaced by FINRA Rule 4110. *See* Exchange Act Release No. 61557 (February 22, 2010), 75 FR 9472 (March 2, 2010) (SR–NYSE–2010–10).

[11] The adjustments are as follows: (A) Additions for haircuts and undue concentration charges taken pursuant to paragraph (c)(2)(vi)(M) of Rule 15c3–1 under the Act on registered securities in dealer accounts; (B) Deductions for clearing organization deposits; and (C) Deductions for any cash surrender value of life insurance policies allowable under Rule 15c3–1 under the Act. *See* NYSE Rule 103.20(a)(iv).

[12] *See supra* note 3.

[13] *See* proposed NYSE Rule 103.20(a)(1).

[14] *See* proposed NYSE Rule 103.20(a)(3).

[15] *See* proposed NYSE Rule 103.20(b)(2).

[16] *See* proposed NYSE Rule 103.20(a)(4).

[17] *See* proposed NYSE Rule 103.20(a)(5).

[18] *See* NYSE Rule 103.20(a)(ii).

[19] The Exchange further notes that the current ETF financial requirements date back to a time when the overall financial requirements for specialists (predecessors to DMM units) were significantly higher, and have not been modernized to account for a changing micro and macro market structure, despite decreases in the financial requirements applicable to other securities. *See* Securities Exchange Act Release No. 54205 (July 25, 2006), 71 FR 43260 (July 31, 2006) (SR–NYSE–2005–38).

[20] *See* note 8 *supra.*

[21] *See* note 11 *supra.*

[22] *See* proposed NYSE Rule 103.20(b)(3).

[23] Specifically, a DMM unit would be required to notify NYSE Regulation when: (A) the DMM unit's Net Liquid Assets fall below the minimum requirements; (B) the percentage of Net Liquid Assets derived from the DMM unit's Excess Net Capital falls below 40% of the total Net Liquid Assets requirement; (C) Liquidity has a commitment term of less than 30 calendar days from the date of the DMM unit's Net Liquid Assets computation; (D) the DMM unit is not in compliance with one or more terms of its loan or commitment agreements relating to its DMM activities; or (E) The repayment date of any actual borrowing is 30 days or less.

See proposed NYSE Rule 103.20(c)(1).

[24] *See* NYSE Rule 0 (describing the regulatory services agreement between NYSE and FINRA). In particular, FINRA would monitor actual DMM unit borrowings after the effective date of the proposed rule to assess whether proceeds have been used to purchase DMM unit securities, U.S. Treasury securities, or reverse repurchase agreements collateralized by U.S. Treasury securities, or are held as cash. This could be accomplished, for example, by comparing the timing of the borrowings to the timing of a DMM unit's purchases of the corresponding assets.

[25] 15 U.S.C. 78f.

[26] 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).

with Section 6(b)(5) of the Act,[27] 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, and, in general, to protect investors and the public interest, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that the expansion of the the types of assets that will be available for a DMM unit to include in its Net Liquid Assets requirement should facilitate a DMM unit's ability to meet the minimum capital requirements imposed by the Exchange, thus removing impediments to a free and open market. The proposal's requirement that a DMM unit derive at least 40% of its total required Net Liquid Assets with Excess Net Capital appears to be reasonably designed to protect investors and the public interest because the Rule will continue to require that a DMM unit hold a portion of capital that is derived from sources recognized by the Commission as allowable for a broker-dealer to meet its minimum net capital requirement.[28] In making this finding, the Commission notes that the Exchange represented in its filing that it believes that the 40% level exceeds the amount of capital that historical DMM unit losses have required. The Commission also believes that the proposal's delineation of the circumstances under which a DMM unit must immediately notify NYSE Regulation, such as when its Net Liquid Assets fall below the minimum threshold of the Rule, is reasonably designed to protect investors and the public interest and prevent fraudulent and manipulative acts and practices.

The Commission also believes that the Exchange's removal of the Market Risk Add-on Charge and the elimination of the deductions for clearing organization deposits and the cash surrender value of certain life insurance policies is also reasonably designed to facilitate transactions in securities and perfect the mechanism of a free and open market. In its filing, the Exchange noted that the overall DMM unit risk levels have declined since the original implementation of NYSE Rule 103.20, the overall consolidated Tape A volume as well as the Exchange's average daily volume of shares traded have declined approximately 30% since 2010, the average value of DMM units' end-of-day position inventories have decreased by over half since the last time the Exchange filed to amend the DMM net capital requirements, and the duration of a DMM unit's position is much shorter than it was in years past. The Commission believes that these factors support the Exchange's rationale for changing the Rule.

The Commission also believes that harmonizing the financial requirements applicable to DMM units responsible for ETFs with the requirements applicable to DMM units responsible for other securities promotes just and equitable principles of trade. The Exchange represented that it does not currently list or trade ETFs, and that the enhanced financial requirements for DMM units responsible for ETFs date back to a time when the overall financial requirements for specialists (predecessors to DMM units) were significantly higher, and have not been modernized to account for a changing micro and macro market structure, despite decreases in the financial requirements applicable to other securities.

The Commission also finds that the proposed rule change is consistent with Section 6(b)(8) of the Act,[29] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that the easing of financial requirements for DMM units should promote competition in that it will permit a greater number of broker-dealers to qualify as DMMs while still providing assurances that DMMs have the financial wherewithal to undertake the responsibilities that attend to such a role. Finally, the conditions under which a DMM unit must notify NYSE Regulation under the proposal appear to be narrowly tailored to meet the objective of keeping NYSE Regulation informed of financially troubled DMM units.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NYSE–2014–02) be, and it is hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

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[27] 15 U.S.C. 78f(b)(5).

[28] *See* Rule 15c3–1 under the Act.

[29] 15 U.S.C. 78f(b)(8).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71621; File No. SR–EDGA–2014–02]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

February 27, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on February 18, 2014, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Amend Flag RC, which routes to the National Stock Exchange, Inc. (''NSX'') and adds liquidity; and (ii) make an administrative change to the definition of Total Consolidated Volume (''TCV''). The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) Amend Flag RC, which routes to the NSX and adds liquidity; and (ii) make an administrative change to the definition of TCV.

Flag RC

In securities priced at or above $1.00, the Exchange currently provides a rebate of $0.0026 per share for Members' orders that yield Flag RC, which routes to the NSX and adds liquidity. The Exchange proposes to amend its Fee Schedule to replace this rebate with a fee of $0.0018 per share for Members' orders that yield Flag RC. The proposed change represents a pass through of the rate that Direct Edge ECN LLC (d/b/a DE Route) (''DE Route''), the Exchange's affiliated routing broker-dealer, is charged for routing orders that add liquidity to NSX when it does not qualify for a volume tiered reduced fee. The proposed change is in response to NSX's February 2014 fee change where the NSX replaced its rebate of $0.0026 per share with a fee of $0.0018 per share for orders that add liquidity on the NSX.[4] When DE Route routes to and adds liquidity on the NSX, it will be charged a standard rate of $0.0018 per share.[5] DE Route will pass through this rate on NSX to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

TCV Definition

On December 9, 2013, the Exchange amended its Fee Schedule to exclude odd lot transactions from the definition of TCV, which is used to determine whether a Member is eligible for certain pricing tiers, through January 31, 2014.[6] Prior to December 9, 2013, an odd lot transaction, which is generally an execution of less than 100 shares,[7] was not reported to the consolidated tape. Therefore, the Exchange did not include odd lot transactions in its calculation of TCV.[8] The proposal was designed to allow Members additional time to adjust to the potential impact of including odd lot transactions within consolidated volumes.

Beginning on February 1, 2014, the Exchange began to include odd lots in the TCV calculation after a nearly two month transition period. Therefore, the Exchange proposes to update the definition of TCV in its Fee Schedule to remove, ''excluding odd lots through January 31, 2014'' and no longer reflect that odd lots are excluded from the calculation of TCV. As amended, the definition of TCV would read as follows: ''the volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month in which the fees are calculated.''

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on February 18, 2014.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Flag RC

The Exchange believes that its proposal to replace the pass through rebate of $0.0026 per share for Members' orders that yield Flag RC with a fee of $0.0018 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NSX through DE Route. Prior to NSX's February 2014 fee change, NSX provided its members a rebate of $0.0026 per share to add liquidity to the NSX and provided DE Route that same rebate, which DE Route passed through to the Exchange and the Exchange provided to its Members. In February 2014, NSX replaced the rebate of $0.0026 per share it provided its customers to add liquidity with a fee of $0.0018 per share.[11] Therefore, the Exchange believes that the proposed change to Flag RC to replace the rebate of $0.0026 per share with a fee of $0.0018 per share is equitable and reasonable because it accounts for the pricing change on the NSX. In addition, the proposal allows the Exchange to charge its Members a pass-through rate for orders that are routed to the NSX and add liquidity. Furthermore, the Exchange notes that routing through DE Route is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

TCV Definition

The Exchange believes its proposal to amend its definition of TCV is reasonable because it provides Members with greater clarity with regard to how the Exchange calculates TCV. The Exchange announced in its earlier filing amending the definition of TCV that it would begin to include odd lots in the TCV calculation on February 1, 2014, after the nearly two month transition period.[12] The Exchange believes it is reasonable to now amend its definition of TCV to clarify that odd lots are no longer excluded. The proposed amendment is intended to make the Fee Schedule clearer and less confusing for investors and eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. The proposed rule change is also equitable and not unfairly

[4] *See* NSX, Information Circular 14–017, Amendments to the NSX Fee and Rebate Schedule Effective on February 18, 2014, *http://www.nsx.com/resources/content/7/documents/InformationCircular14-017.pdf.*

[5] The Exchange notes that to the extent DE Route does or does not achieve any volume tiered reduced fee on NSX, its rate for Flag RC will not change.

[6] *See* Securities Exchange Act Release No. 71059 (December 12, 2013), 78 FR 76665 (December 18, 2013) (SR–EDGA–2013–37).

[7] *See* Exchange Rule 11.6.

[8] *See* Securities Exchange Act Release No. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR–CTA–2013–05) (Order Approving the Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan). *See also* Securities Exchange Act Release No. 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (File No. S7–24–89) (Order Approving Amendment No. 30 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis). *See also* Securities Exchange Act Release No. 70898 (November 19, 2013) (SR–NYSE–2013–75). *See also* announcements regarding December 9, 2013 implementation date, *available at https://cta.nyxdata.com/cta/popup/news/2385* and *http://www.nasdaqtrader.com/TraderNews.aspx?id=uva2013-11.* If the inclusion of odd lot transactions in the consolidated tape is delayed to a date after December 9, 2013, the manner of inclusion or exclusion of odd lot transactions described in this proposal for purposes of billing on the Exchange would similarly take effect on such later date.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] *See* NSX, Information Circular 14–017, Amendments to the NSX Fee and Rebate Schedule Effective on February 18, 2014, *http://www.nsx.com/resources/content/7/documents/InformationCircular14-017.pdf.*

[12] *See* Securities Exchange Act Release No. 71059 (December 12, 2013), 78 FR 76665 (December 18, 2013) (SR–EDGA–2013–37).

discriminatory because it would apply to all Members uniformly.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposal amendments its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGA's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Flag RC

The Exchange believes that its proposal to pass through a fee of $0.0018 per share for Members' orders that yield Flag RC would increase intermarket competition because it offers customers an alternative means to route to NSX for the same price as entering orders on NSX directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

TCV Definition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal to exclude odd lot transactions from the TCV calculation was intended to allow Members additional time to adjust to the potential impact of including odd lot transactions within consolidated volumes. The Exchange believes that the proposed non-substantive change to the definition of TCV would not affect intermarket nor intramarket competition because the change does not alter the criteria necessary to achieve the tiers nor the rates offered by the tiers. In addition, the Exchange believes that other exchanges have ceased excluding odd lot transactions from the consolidated volume calculations as of February 1, 2014.[13]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(2)[15] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2014–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2014–02. 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–EDGA–2014–02, and should be submitted on or before March 26, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

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[13] *See* Securities Exchange Act Release No. 70997 (December 5, 2013), 78 FR 75432 (December 11, 2013) (SR–NYSE–2013–78) (amending its price list to exclude odd lot transactions from its consolidated average daily trading volume calculations thru January 31, 2014); *see also,* Securities Exchange Act Release No. 71140 (December 19, 2013), 78 FR 78460 (December 26, 2013) (SR–BATS–2013–063) (amending its price schedule to exclude odd lot transactions from its consolidated average daily trading volume calculations thru January 31, 2014).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4 (f)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71623; File No. SR–FINRA–2013–050]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Over-the-Counter Equity Trade Reporting and OATS Reporting

February 27, 2014.

On November 12, 2013, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 amend the FINRA rules governing the reporting of (i) over-the-counter (''OTC'') transactions in equity securities to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

FINRA Facilities;[3] and (ii) orders in NMS stocks and OTC Equity Securities to the Order Audit Trail System (''OATS''). The Proposal was published for comment in the **Federal Register** on November 29, 2013.[4] The Commission received one comment on the proposed rule change.[5] On January 9, 2014, the Commission extended the time period for Commission action on the proposal to February 27, 2014.[6] FINRA responded to the comment and submitted an amendment to the proposed rule change on February 14, 2014.[7] The Commission is approving the proposed rule change as amended on an accelerated basis.

I. Description of the Proposed Rule Change

FINRA proposes to amend the equity trade reporting rules relating to reporting: (i) An additional time field for specified trades; (ii) execution time in milliseconds; (iii) reversals; (iv) trades executed on non-business days and trades that are more than one year old; and (v) ''step-outs.'' In addition, FINRA proposes changes in the processing of trades that are submitted to a FINRA Facility for clearing as well as technical changes to the rules relating to the OTC Reporting Facility (''ORF'') and codifying existing OATS guidance regarding reporting order event times to OATS in milliseconds. FINRA also proposes several non-substantive technical changes to rules that are otherwise being amended by this proposed rule change.

Reporting an Additional Time Field

FINRA rules require that trade reports submitted to the FINRA Facilities include the time of trade execution, except where another time is expressly required by rule. With respect to Stop Stock transactions,[8] and transactions that reflect an execution price that is based on a prior reference point in time (''PRP transactions''), current FINRA rules require that in lieu of the actual time the trade was executed, members report the time at which the member and the other party agreed to the Stop Stock price and the prior reference time, respectively.[9] FINRA is proposing to require members to include two times when reporting Stop Stock transactions and PRP transactions: (1) The time at which the parties agree to the Stop Stock price or the prior reference time, and (2) the actual time of execution.[10]

In addition, FINRA is proposing to require members to include two times when reporting block transactions using the Intermarket Sweep Order (''ISO'') exception (outbound) under SEC Rule 611 (''Order Protection Rule'') of Regulation NMS. Current FINRA guidance requires members to use the time that all material terms of the transaction are known as the execution time in the trade report.[11] FINRA is proposing that trade reports reflect both the time the firm routed ISOs and the execution time, if different. With this additional time in the trade report, FINRA believes that it will be able to determine better whether ISOs were properly sent to other trading centers in compliance with the ISO exception to the Order Protection Rule.[12]

FINRA believes that requiring members to report additional time-related information will ensure a more accurate and complete audit trail and enhance FINRA's ability to surveil on an automated basis for compliance with FINRA trade reporting and other rules.[13] FINRA also believes that having both times reflected in the trade report will streamline member reviews and facilitate members' ability to demonstrate compliance with FINRA and other rules.[14]

Reporting Time in Milliseconds

FINRA's trade reporting rules currently require members to report execution time to the FINRA Facilities in seconds,[15] while the execution time for exchange trades is expressed in milliseconds. Similarly, the OATS rules currently requires members to record order event times in terms of hours, minutes, and seconds.[16] FINRA notes that, because FINRA's audit trails consolidate exchange and OTC trades for regulatory purposes, sequencing consolidated transactions by execution time can be difficult with the different time formats, particularly in active stocks.[17] To enhance and help bring consistency to FINRA's audit trail, FINRA is proposing amendments to require members to express time in milliseconds when reporting trades to the FINRA Facilities or order information to OATS, if the member's system captures time in milliseconds.[18] Members with systems that do not capture milliseconds will be permitted to continue reporting time in seconds.[19]

FINRA believes that where trades are executed by electronic systems that already capture execution time in milliseconds, it should be relatively straightforward for members to report such trades to the FINRA Facilities using milliseconds. Thus, FINRA does not believe that the proposed requirement would be burdensome for members, nor would it require them to make significant systems changes. FINRA recognizes, however, that where trades are executed manually, it would

[3] Specifically, the FINRA Facilities are the Alternative Display Facility (''ADF'') and the Trade Reporting Facilities (''TRF''), to which members report OTC transactions in NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS; and the OTC Reporting Facility (''ORF''), to which members report transactions in ''OTC Equity Securities,'' as defined in FINRA Rule 6420 (i.e., non-NMS stocks such as OTC Bulletin Board and OTC Market securities), as well as transactions in Restricted Equity Securities, as defined in FINRA Rule 6420, effected pursuant to Securities Act Rule 144A.

[4] *See* Securities Exchange Act Release No. 70924 (November 22, 2013), 78 FR 71695 (''Notice'').

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Manisha Kimmel, Executive Director, Financial Information Forum, dated December 20, 2013 (''FIF Letter'').

[6] *See* Securities Exchange Act Release No. 71262 (January 9, 2014), 79 FR 2723 (January 15, 2014).

[7] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Lisa C. Horrigan, Associate General Counsel, FINRA, dated February 14, 2014 (''FINRA Response'').

[8] ''Stop Stock transaction'' means a transaction resulting from an order in which a member and another party agree that the order will be executed at a Stop Stock price or better, which price is based upon the prices at which the security is trading at the time the order is received by the member. *See* Rules 6220, 6320A, 6320B and 6420.

[9] *See* paragraphs (F) and (G) of Rules 6282(a)(4), 6380A(a)(5), 6380B(a)(5) and 6622(a)(5).

[10] The rules provide that if the trade is executed within 10 seconds of the time the parties agree to the Stop Stock price or within 10 seconds of the prior reference time, then the designated modifier should not be used. FINRA also proposes to amend the rules to clarify that in this instance, only the actual time of execution should be reported.

[11] *See* NASD *Member Alert: Guidance Relating to ''Execution Time'' for Purposes of Compliance with NASD Trade Reporting Rules* (June 13, 2007).

[12] *See* Notice, 78 FR 71696. FINRA also notes that many firms have requested that they be permitted to provide the additional time to avoid the appearance of non-compliance with the Order Protection Rule.

[13] Upon implementation of the proposed rule change, any Stop Stock and PRP transactions that are reported more than 10 seconds following execution will be marked late. *See* Notice, 78 FR 71696.

[14] *See* Notice, 78 FR 71699.

[15] *See, e.g.,* Rules 6282(c)(2)(H), 6380A(c)(5), 6380B(c)(5) and 6622(c)(5).

[16] Although Rule 7440(a)(2) requires order event times to be recorded to the second, FINRA published guidance in 2011 in connection with the expansion of OATS to all NMS stocks stating that firms that capture time in milliseconds should report time to OATS in milliseconds. *See* Notice, 78 FR at 71696. The proposed rule change codifies this guidance into Rule 7440(a)(2).

[17] *See* Notice, 78 FR at 71696. FINRA also notes that the Intermarket Surveillance Group (''ISG'') consolidated audit trail can accommodate execution times expressed in milliseconds.

[18] *See* Proposed Rules 6282.04, 6380A.04, 6380B.04, 6622.04, 7130.01, 7230A.01, 7230B.01, 7330.01, and 7440(a)(2).

[19] FINRA notes that it expects members that have systems currently capable of capturing time in milliseconds to continue to do so and not to make systems changes to revert to seconds unless they have a legitimate business reason for doing so. FINRA may review any such systems changes in the course of an inquiry or a member examination. *See* Notice, 78 FR at 71696.

be more difficult for members to capture milliseconds for purposes of trade reporting. Accordingly, FINRA believes that it is appropriate not to require that all members capture and report time in milliseconds.[20]

Reporting Reversals

FINRA rules require that if a trade that was previously reported to FINRA is cancelled, members must report the cancellation to the same FINRA Facility to which the trade was originally reported[21] and must do so within the time frames set forth in the rules.[22] Members report a ''cancellation'' when trades are cancelled on the date of execution and a ''reversal'' when trades are cancelled on a day after the date of execution.[23] Today, when a member reports a reversal of a trade that was previously reported to a FINRA Facility, there is no requirement that the member provide information in the reversal report to identify the original trade. FINRA proposes requiring that members identify the original trade in the reversal report by including the control number generated by the FINRA Facility and report date for the original trade report. FINRA believes that this information will enable FINRA to better ''link'' reports of reversals with the associated previously reported trades and thereby allow FINRA to recreate more accurately the firm's market activity, as well as surveil for compliance with FINRA trade reporting rules.[24] FINRA is also proposing several additional conforming amendments to the rules relating to trade cancellations.[25]

Reporting Non-Business Day Trades and T+365 Trades

Currently, trades executed on non-business days (i.e., weekends and holidays) and trades reported more than 365 days after trade date (T+365) cannot be reported to a FINRA Facility and instead must be reported on ''Form T'' through FINRA's Firm Gateway.[26] FINRA is proposing systems enhancements to enable members to submit reports of non-business day trades and T+365 trades electronically to the FINRA Facilities rather than using ''Form T'' to report such trades. As is the case today, non-business day trades and T+365 trades will not be submitted to clearing by the FINRA Facility[27] or disseminated. FINRA also is proposing to amend the rules to require that members report non-business day trades on an ''as/of'' basis by 8:15 a.m. the next business day following execution with the unique trade report modifier to denote their execution outside normal market hours; trades not reported by 8:15 a.m. will be marked late.[28] All T+365 trades will be reported on an ''as/of'' basis and will be marked late. FINRA believes that this requirement will ensure that non-business day trades are properly sequenced for audit trail purposes.[29]

Reporting Step-Outs

Today, members can effectuate a ''step-out''[30] by submitting a clearing-only report to a FINRA Facility. FINRA rules prohibit members from submitting to a FINRA Facility any non-tape report (including but not limited to reports of step-outs) associated with a previously executed trade that was not reported to that FINRA Facility.[31] For every step-out, one member is stepping out of (or transferring) the position and the other member is stepping into (or receiving) the position. Where both members are submitting a clearing-only report to a FINRA Facility, each member currently must use the ''step-out'' indicator. FINRA notes that, some clearing firms have requested the ability to see whether their correspondents are stepping out or stepping in with respect to such transfers. Accordingly, FINRA is proposing that, where both sides are submitting a clearing-only report to effectuate a step-out, the member transferring out of the position must report a step-out and the member receiving the position must report a step-in. FINRA believes that the proposed will more accurately reflect the transfer and will provide greater transparency for clearing firms whose correspondents effect these transfers.[32]

Trade Processing

Currently, when firms use the trade acceptance and comparison process for locking in trades submitted for clearing through the ADF, FINRA/Nasdaq TRF, and ORF, the reporting party reports the trade and the contra party subsequently either accepts or declines the trade, and any trade that has been declined by the contra party is purged from the system at the end of trade date processing.[33] FINRA proposes that, rather than being purged, declined trades will be carried over and remain available for cancellation or correction by the reporting party or acceptance by the contra party. Declined trades that are carried over will not be available for the automatic lock-in process described in the rules and will not be sent to clearing unless the parties take action. FINRA also is proposing to codify the existing requirement that the reporting member must cancel a declined trade that was previously reported for dissemination purposes to have the trade removed from the tape.[34] In addition, FINRA is proposing technical changes to reorganize and clarify the provisions relating to locking in trades for clearing and the processing of T+N (also referred to ''as/of'') trades.[35] FINRA notes that these proposed trade processing changes will not impact the way members report to FINRA and will not require members to make changes to their systems.[36]

ORF Technical Amendments

FINRA is proposing several additional technical amendments to the ORF rules. FINRA is proposing to delete unnecessary and obsolete language from the ORF rules.[37] FINRA initially

[20] FINRA notes that a review of OATS data from October 11, 2013 through October 22, 2013 suggests that, for trade reporting purposes, a significant number of executing firms have systems that currently capture execution time in milliseconds and, as a result, would be subject to the proposed requirement. *See* Notice, 78 FR at 71696.

[21] *See* Rules 7130(d), 7230A(i), 7230B(h) and 7330(h).

[22] *See, e.g.,* Rules 6282(j)(2), 6380A(g)(2), 6380B(f)(2), and 6622(f)(2) and (f)(3).

[23] *See, e.g.,* Trade Reporting FAQ # 305.6, available at *www.finra.org/Industry/Regulation/Guidance/p038942# 305.*

[24] *See* Notice, 78 FR at 71699.

[25] *See* Notice, 78 FR at 71697.

[26] *See* Rules 6282(a)(5), 6380A(a)(8), 6380B(a)(8) and 6622(a)(8). FINRA also notes that, because these trades are not reported to a FINRA Facility, they are not captured for purposes of FINRA's automated surveillance systems, and regulatory fees under Section 3 of Schedule A to the FINRA By-Laws must be assessed manually. *See* Notice, 78 FR at 71697.

[27] FINRA is proposing to expressly provide that these trades will not be submitted to clearing in Rules 7140(b), 7240A(b), 7240B(b) and 7340(b).

[28] *See* Rules 6282(a)(2), 6380A(a)(2), 6380B(a)(2) and 6622(a)(2). FINRA also is proposing to delete the reference to ''T+1'' in subparagraph (D) of these rules because, e.g., the next business day would be greater than T+1 for a trade that is executed on a Saturday. *See* Notice, 78 FR at 71697. FINRA also is proposing a conforming change to Rule 6622(a)(3) to provide that any Securities Act Rule 144A transaction in a Restricted Equity Security that is executed on a non-business day must be reported by the time the ORF closes the next business day. *See id.*

[29] *See* Notice, 78 FR 71699.

[30] A step-out allows a member firm to allocate all or part of a client's position from a previously executed trade to the client's account at another firm. *See* Trade Reporting FAQ 301.1, available at *www.finra.org/Industry/Regulation/Guidance/p038942# 301.*

[31] *See* Rules 7130(d), 7230A(i), 7230B(h) and 7330(h).

[32] *See* Notice, 78 FR at 71699.

[33] *See* Rules 7140(a), 7240A(b) and 7340(b).

[34] *See* Notice, 78 FR at 71698.

[35] *See* Notice, 78 FR at 71698.

FINRA also is proposing to include language in new Rule 7240B(b) clarifying that T+N (or ''as/of'') entries may be submitted until the FINRA/NYSE TRF closes for the day, i.e., 8:00 p.m. This language conforms to the language of Rules 7140(b), 7240A(c) and 7340(c) (as renumbered herein) relating to the other FINRA Facilities.

[36] *See* Notice, 78 FR at 71698.

[37] *See* Notice, 78 FR at 71698.

proposed to close the ORF at 6:30 p.m. Eastern Time rather than 8:00 p.m. However, in Amendment No. 1, FINRA proposes to keep the ORF closing time at 8:00 p.m.

Proposed Technical Changes in Amendment No. 1

FINRA is proposing a number of technical amendments to update cross-references and make other non-substantive changes to Rules 6282, 7130 and 7140 relating to the ADF as the result of the approval of SR–FINRA–2013–053.

II. Summary of Comment and Response

Request for Clarification

The FIF Letter requests clarification on a number of aspects of the proposed rule change. First, with respect to block transactions, FIF asks which route time would be expected on the trade report, given that, when multiple ISOs are routed, the route times could differ by one or more milliseconds.[38] FINRA responds that its current guidance requires members to use the time that all material terms of the transaction are known as the execution time in the trade report, and under the proposed rule change, firms will be required to also report the time that the firm routed the ISOs (if different from the execution time).[39] FINRA explains that firms will continue to report the time that all material terms of the transaction are known in the ''execution time'' field, and in the new time field (i.e., the reference or ''ISO time'' field), firms should report the time they used to determine the ISOs, if any, to route to any better-priced protected quotations (sometimes referred to as the time the firm takes a ''snapshot'' of the market).[40] FINRA notes that, to comply with SEC Rule 611(b)(6), firms need to utilize an automated system that is capable of ascertaining current protected quotations and simultaneously routing the necessary ISOs.[41] Thus, FINRA expects the ''snapshot'' time and the time that ISOs are routed to be the same. To the extent that these times differ, or where multiple ISOs are routed and the route times differ, FINRA believes that using the ''snapshot'' time in all instances will eliminate any confusion regarding which time to report.[42]

FIF also questions whether report cards and matching will be maintained at the one-second level rather than at the millisecond level, noting that currently clocks are required to be synchronized to within one second of the National Institute of Standards and Technology (NIST) standard.[43] FINRA responds that, with respect to report cards, the determination whether a trade has been reported late will remain at the second level for firms that report execution time in seconds, and for firms that report time in milliseconds, the determination will be made at the millisecond level.[44] FINRA states that synchronization to the NIST standard would remain at the second (and not millisecond) level.[45] However, FINRA notes that if a firm submits multiple reports for the same event (*e.g.,* a trade report and an OATS execution report), FINRA would expect the granularity of the time stamps to be consistent.[46]

FIF asks whether the requirement to include control numbers will be on a ''go forward basis'' only for T+365 reporting.[47] FINRA responds that, in accordance with system requirements, the control number field will be a required field for all reports of reversals following implementation.[48] However, FINRA will validate the control number only where the original trade was executed after implementation of the proposed rule change.[49] Accordingly, when reversing trades that were executed prior to the implementation of the proposed rule change, firms will not be required to provide an actual control number and instead may insert a ''dummy'' number to populate the required field.[50]

FIF also asks whether Form T will be retired as a result of the proposed rule change.[51] FINRA responds that the proposed rule change requiring firms to report trades executed on non-business days and T+365 trades to the FINRA Facilities will significantly reduce the need for Form T.[52] However, FINRA plan to retain Form T for use in instances in which firms need to report with Form T (*e.g.,* where the ticker symbol for the security is no longer available or a market participant identifier is no longer active).[53]

FIF questions whether there will be matching on ''step-in'' and ''step-out'' trades.[54] FINRA responds that the FINRA Facilities that offer matching will match corresponding ''step-out'' and ''step-in'' submissions, but will not match two ''step-in'' or two ''step-out'' submissions.[55]

FIF also asks whether declined trades that are corrected and subsequently accepted are subject to the ''20 minute rule'' for trade comparison.[56] FINRA responds that a firm is required to accept or decline a trade within 20 minutes after execution, and FINRA generally expects firms to complete the process of accepting or declining a trade, including any subsequent updates, within that time frame.[57] FINRA reminds firms that, where the reporting party enters inaccurate trade information, rather than declining the trade, the contra party should submit its own correct information within 20 minutes of execution to be in compliance with the rule.[58]

FIF also notes its understanding that the millisecond requirement was not intended to introduce a significant burden on firms and that only those systems that capture millisecond time stamps in a reportable format are required to be reported.[59] FINRA confirms that it is not mandating that firms start capturing milliseconds and any such proposal would be subject to a separate rule filing and notice and comment.[60] However, where a firm's system captures time in milliseconds, FINRA expects that the system will be capable of reporting in milliseconds.[61]

ORF Closing Time

FIF also recommends keeping the 8:00 p.m. closing time for the ORF to maintain consistency with FINRA's TRFs in order to reduce the likelihood of errors, allow firms to leverage current workflows and assist firms in resolving operational issues and completing processing before the end of the day.[62] In response to this concern, in Amendment No. 1, FINRA proposes to maintain the closing time at 8:00 p.m.[63]

Implementation Effort/Time Frame

FIF recommends a nine-month implementation period following Commission approval contingent upon the release of TRF specifications within seven months and the availability of a robust test environment within three

[38] *See* FIF Letter at 1.
[39] *See* FINRA Response at 4.
[40] *See id.*
[41] *See id.*
[42] *Id.* at 5.
[43] FIF Letter at 1.
[44] FINRA Response at 5.
[45] *See id.*
[46] *See id.*
[47] *See* FIF Letter at 2.
[48] *See* FINRA Response at 5.
[49] *See id.*
[50] *See id.*
[51] *See* FIF Letter at 2.
[52] *See* FINRA Response at 6.
[53] *See id.*
[54] *See* FIF Letter at 2.
[55] *See* FINRA Response at 6.
[56] *See* FIF Letter at 2.
[57] *See* FINRA Response at 6.
[58] *See id.*
[59] *See* FIF Letter at 2.
[60] *See* FINRA Response at 7.
[61] *See id.*
[62] *See* FIF Letter at 2.
[63] *See* FINRA Response at 6–7.

months of the implementation date.[64] FINRA responds that it believes that firms will have sufficient time to make the necessary systems changes for the ORF implementation, currently scheduled on June 2, 2014, and for the implementation no later than September 30, 2014 for the ADF and TRFs.[65] FINRA notes that it will announce the implementation dates in a *Regulatory Notice*.[66]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 15A(b) of the Act.[67] In particular, the Commission finds that the proposed rule change is consistent with FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[68] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA proposes to amend the equity trade reporting rules relating to reporting: (i) an additional time field for specified trades; (ii) execution time in milliseconds; (iii) reversals; (iv) trades executed on non-business days and trades that are more than one year old; and (v) ''step-outs.'' In addition, FINRA proposes changes in the processing of trades that are submitted to a FINRA Facility for clearing as well as technical changes to the rules relating to the OTC Reporting Facility (''ORF'') and codifying existing OATS guidance regarding reporting order event times to OATS in milliseconds. The Commission believes that the proposed changes should enhance FINRA's audit trail and automated surveillance program, promote more consistent trade reporting by members, and aid in the detection of violations of FINRA trade reporting and other rules.

The Commission notes that FIF submitted a comment letter containing primarily clarifying questions and that FINRA submitted a response addressing these clarifying questions. The FIF Letter requested a substantive change to the proposal—that the ORF closing time remain 8 p.m. In its response in Amendment No. 1, FINRA proposed keeping the ORF closing time of 8 p.m.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act and the rules and regulations thereunder applicable to a national securities association.[69]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–050. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method.

The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2013–050 and should be submitted on or before [insert date 21 days from publication in the **Federal Register**].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1 prior to the 30th day after the date of publication of notice in the **Federal Register**. Amendment No. 1 proposes maintaining the current 8:00 p.m. closing time of the ORF and includes technical amendments to update cross-references and make other non-substantive changes to Rules 6282, 7130 and 7140 relating to the ADF as the result of the approval of SR–FINRA–2013–053. Accordingly, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[70]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[71] that the proposed rule change (SR–FINRA–2013–050), is hereby approved, as modified by Amendment No. 1 on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[72]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–04792 Filed 3–4–14; 8:45 am]

BILLING CODE 8011–01–P

[64] *See* FIF Letter at 2–3.

[65] *See* FINRA Response at 7.

[66] *See id.* FINRA also notes that, pursuant to the original filing, the proposed amendments to the OATS rules will be implemented no later than 45 days after Commission approval.

[67] 15 U.S.C. 78*o*–3(b). 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).

[68] 15 U.S.C. 78*o*–3(b)(6).

[69] 15 U.S.C. 78*o*–3(b)(6).

[70] 15 U.S.C. 78s(b)(2).

[71] 15 U.S.C. 78s(b)(2).

[72] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Delegation of Authority No. 236–4]

Re-Delegation by the Assistant Secretary of State for Educational and Cultural Affairs to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs of Authority Under Section 102 of the Mutual Educational and Cultural Exchange Act of 1961, as Amended

By virtue of the authority vested in me as the Assistant Secretary of State for

Educational and Cultural Affairs, including by Delegation of Authority No. 236–3 (August 28, 2000), and to the extent permitted by law, I hereby re-delegate to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs the functions in section 102 of the Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. § 2452) relating to the provision by grant, contract or otherwise for a wide variety of educational and cultural exchanges.

Notwithstanding this Delegation, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, the Under Secretary for Public Diplomacy and Public Affairs, and the Assistant Secretary for Educational and Cultural Affairs may at any time exercise the functions delegated herein.

Any reference in this Delegation of Authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This Delegation shall be published in the **Federal Register**.

Dated: January 31, 2014.

Evan Ryan,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2014–04869 Filed 3–4–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 370]

Authority To Promulgate Regulations Under Department of State Standardized Regulation 013

By virtue of the authority vested in the Secretary of State by the Department of State Standardized Regulations and the authorities therefore, and pursuant to the authority vested in me by Delegation of Authority No. 198, dated September 16, 1992, I hereby delegate to the Executive Director for the Bureau of Human Resources, to the extent authorized by law, the authority of the Secretary to promulgate implementing regulations pursuant to Department of State Standardized Regulation 013, and to set appropriate policies and procedures.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Under Secretary for Management, may at any time exercise the authority herein delegated.

This delegation of authority will be published in the **Federal Register**.

Dated: February 16, 2014.

Patrick F. Kennedy,

Under Secretary of State for Management.

[FR Doc. 2014–04896 Filed 3–4–14; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Global Positioning System Pre-Operational Civil Navigation; Message Continuous Broadcast

AGENCY: Office of the Assistant Secretary for Research and Technology, Department of Transportation.

ACTION: Notice; request for public comments.

SUMMARY: The purpose of this notice is to seek comment from the public and industry regarding plans by the United States Air Force to broadcast pre-operational L2C and L5 civil navigation (CNAV) messages from certain Global Positioning System (GPS) satellites beginning in April 2014. These messages will be formatted in accordance with Interface Specifications IS–GPS–200G and IS–GPS–705C, each dated 31 Jan 2013. However, a pre-operational signal means the availability and other characteristics of the broadcast signal may not comply with all requirements of the relevant Interface Specifications and should be employed at the users' own risk.

The Department of Transportation seeks comments on: (a) The benefits, risks, or issues to users from this plan, including comments on the appropriate timeline for broadcasting pre-operational CNAV messages. Comments are requested from industry on: (b) the receiver development benefits and other intended uses of pre-operational signals, and (c) the benefits and potential impacts to users of continuous pre-operational CNAV messages with L2C and L5 signals set healthy.

DATES: Submit comments on or before April 4, 2014.

ADDRESSES: You may submit comments identified by docket number [DOT–OST–2014–0028] using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

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

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

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the address given below under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy from which you have deleted the claimed confidential business information to the docket. When you send a comment containing information identified as confidential business information, you should include a cover letter setting forth the reasons you believe the information qualifies as ''confidential business information''. (49 CFR 7.17)

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or would like to schedule a discussion, contact Karen L. Van Dyke, Office of the Assistant Secretary for Research and Technology Administration, Director Positioning, Navigation, and Timing and Spectrum Management, telephone 202–366–3180 or email *karen.vandyke@dot.gov.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The United States Government is currently adding new civil signals to the GPS constellation, including L2C and L5. The Commander of the United States Air Force Space Command directed that, beginning in April 2014, GPS satellites will broadcast navigation messages on the L2C and L5 signals to facilitate development of compatible user equipment and CNAV operational procedures. This extended pre-operational continuous broadcast is the next phase of development of a new capability based on the testing done in June 2013, per 78 **Federal Register** Notice 17185, March 20, 2013. This broadcast message capability is to be implemented using current GPS ground control capabilities in advance of more automated capabilities to become operational with the Next Generation GPS Operational Control System, called OCX.

The CNAV message broadcasts planned to begin in April 2014 will be

implemented on all operational GPS satellites capable of transmitting the L2C and L5 signals. Currently, seven GPS IIR–M satellites broadcast L2C and four GPS IIF satellites broadcast L2C and L5. On average, users may expect at least one L2C-broadcasting satellite to be in view at all times. The CNAV message content will include Broadcast Message Types (MT) 10, 11, 30, and 33 (as defined in IS–GPS–200G and IS–GPS–705C, see *http://www.gps.gov/technical/icwg/*) in lieu of the currently transmitted MT–0. The Air Force intends to broadcast L2C and L5 messages with the health bits set healthy, as was the case during the June 2013 test. The CNAV data uploads will be integrated into current operations, but initially the uploads to each appropriate satellite will occur only twice per week. In December 2014, CNAV uploads are planned to be at the normal rate of once per day for each appropriate satellite. Consequently, users should expect L2C and L5 signals with CNAV messages to provide increased user range error compared to legacy civil signals between April and December 2014. After December 2014, the accuracy of the L2C and L5 signals with CNAV messages is expected to meet or exceed that of legacy signals. Future tests and implementation of the remaining CNAV message types will be announced under separate **Federal Register** Notices.

The pre-operational CNAV messages are being made available for user familiarization and for equipment development. They should not be considered operational pending availability of OCX monitoring and control capabilities, and therefore they should not be used for safety-of-life or other critical purposes. Caveats indicating ''Developmental Signal-in-Space, non-operational'' will be included in Notice Advisory to NAVSTAR Users (NANUs).

The Department of Transportation seeks comments on benefits, risks, or issues to users from this plan, including comments on the appropriate timeline for implementing the plan. Comments are requested from industry on the receiver development benefits and other intended uses of pre-operational signals. Comments are also requested on the benefits and potential impacts to users of continuous pre-operational CNAV broadcast with signals set healthy.

Public Participation

You may submit comments and related material regarding this proposed plan. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (DOT–OST–2014–0028) and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and use ''DOT–OST–2014–0028'' as your search term. Locate this notice in the results and click the corresponding ''Comment Now'' box to submit your comment. 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.

Viewing the comments: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov* and use ''DOT–OST–2014–0028'' as your search term. Use the filters on the left side of the page to highlight ''Public Submissions'' or other document types. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Gregory D. Winfree,

Assistant Secretary, Office of the Assistant Secretary for Research and Technology.

[FR Doc. 2014–04856 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee (ARAC) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the ARAC.

DATES: The meeting will be held on March 20, 2014, starting at 1:00 p.m. Eastern Standard Time. Arrange oral presentations by March 13, 2014.

ADDRESSES: The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, 7th floor, Conference Room 7B.

FOR FURTHER INFORMATION CONTACT: Renee Butner, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–5093; fax (202) 267–5075; email *Renee.Butner@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the ARAC taking place on March 20, 2014, at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

The Agenda includes:

1. Recommendation Report
   a. Flight Test Harmonization Working Group (Transport Airplane and Engine Subcommittee [TAE])
2. Status Reports From Active Working Groups
   a. AC 120–17A Maintenance Control by Reliability Methods (ARAC)
   b. Airman Certification System Working Group (ARAC)
   c. Airworthiness Assurance Working Group (TAE)
   d. Engine Harmonization Working Group (TAE)
3. New Task
   a. Transport Airplane Performance and Handling Characteristics—Phase 2
4. Status Report from the FAA
   a. Commercial Air Tours Maintenance

(CATM) Working Group

Attendance is open to the interested public but limited to the space available. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than March 13, 2014. Please provide the following information: full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen please indicate so.

For persons participating by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Callers outside the Washington metropolitan area are responsible for paying long-distance charges.

The public must arrange by March 13, 2014 to present oral statements at the meeting. The public may present written statements to the Aviation Rulemaking Advisory Committee by providing 25 copies to the Designated Federal Officer, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on February 27, 2014.

Lirio Liu,

Designated Federal Officer, Aviation Rulemaking Advisory Committee.

[FR Doc. 2014–04805 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–21]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. 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 March 25, 2014.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–1188 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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: Katherine L. Haley, ARM–203, Federal Aviation Administration, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591; email *Katherine.L.Haley@faa.gov;* (202) 493 5708.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 27, 2014.

Lirio Liu,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2009–1188.

Petitioner: CAE Simuflite, Inc.

Section of 14 CFR Affected:

14 CFR §§ 91.9(a) and 91.531(a)(1) and (2).

Description of Relief Sought:

Petitioner requests modifications to the existing Exemption No. 10039A, which permits the petitioner and operators of Cessna Citation airplanes covered by the CE–500 type rating to operate those airplanes with a single pilot. The petitioner is requesting the conditions and limitations be changed to allow CAE pilots who satisfactorily complete CAE Simuflite's part 142 FAA approved initial or renewal curriculum to receive credit for previous ground training specific to aircraft systems. The previous training would be credited towards CAE Simuflite's FAA approved part 142 single pilot curriculum under certain conditions.

[FR Doc. 2014–04804 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0365]

Qualification of Drivers; Exemption Applications; Vision

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 from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement 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 commercial motor vehicle (CMV) drivers.

DATES: This decision is effective March 7, 2014. Comments must be received on or before April 4, 2014.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No.

[Docket No. FMCSA–2011–0365], 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:

Elaine M. Papp, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 12 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

William J. Byron (NC)
Michael P. Callihan (OH)
Richard P. Frederiksen (WY)
Lonnie B. Hicks, Jr. (OK)
Samuel V. Holder (IL)
Timothy L. Klompien (MT)
Dennis J. Lessard (IN)
Harry R. Littlejohn (LA)
Jerry L. Pettijohn (OK)
Jake F. Richter (KS)
Robert J. Townsley (VA)
Jeffrey G. Wuensch (WI)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

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. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (77 FR 3552; 77 FR 13691). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

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 renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

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 4, 2014.

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 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). 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 qualifications, experience,

and medical condition of each applicant for an exemption from the vision requirements. 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–2011–0365 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 and may change this proposed rule based on your comments. FMCSA may issue a final rule 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, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2011–0365 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: February 12, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–04849 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2013–0193]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 65 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective March 5, 2014. The exemptions expire on March 7, 2016.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/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.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's 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, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On December 27, 2013, FMCSA published a notice of receipt of Federal diabetes exemption applications from 65 individuals and requested comments from the public (78 FR 79062). The public comment period closed on January 27, 2014, and twenty-two comments were received.

FMCSA has evaluated the eligibility of the 65 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 65 applicants have had ITDM over a range of 1 to 46 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist

verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 27, 2013, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received twenty-two comments in this proceeding. The comments are discussed and considered below.

Eleven of the comments received were in favor of granting Scott A. Stout an exemption from the diabetes standard.

Seven of the comments received were in favor of granting Anthony D. Chrisley an exemption from the diabetes standard.

Larry Dewald is in favor of granting Delayne B. Irwin an exemption from the diabetes standard.

Jami Pierce is in favor of granting Randall D. Pierce an exemption from the diabetes standard.

John Riley is in favor of granting Michael M. Canup an exemption from the diabetes standard.

An anonymous commenter believes that if a driver has over 5 years of experience with no traffic violations that they should be grandfathered into the Diabetes Exemption Program.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (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 provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; 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.

Conclusion

Based upon its evaluation of the 65 exemption applications, FMCSA exempts Bruce S. Allen (ME), David E. Ames (IL), Michael R. Boland (IL), Taylor D. Bruce (MO), Christopher D. Burks (MA), Larry D. Burton (IL), James B. Cameron (PA), Michael M. Canup (AL), John M. Catron (MO), Anthony D. Chrisley (CA), Henry Collins (MO), John B. Conway, Jr. (NC), James V. Davidson, Jr. (UT), Michael A. De La Torre (CA), Corrado DePalma (NJ), Eugene J. Dilley (WI), Scott T. Early (NY), Carl Ermentrout (PA), Douglas E. Erney (IN), William C. Flom (IA), Seth E. Frost (OR), Donald R. Fuller, Jr. (MN), Brian A. Griep (IA), George E. Hagey (IL), Ronnie L. Harrington (MS), Andrew P. Hines (OH), Arlyn D. Holtrop (IA), Stephan P. Hyre (OH), Delayne B. Irwin (SD), Aaron C. Kaplan (CA), Sigmund E. Keller (NY), Derl T. Martin (MO), Waymond E. Mayfield, Jr. (MO), Senad Mehmedovic (KY), Ronald E. Mullard (AL), Francis L. Novotny (MN), Justin C. Orr (CA), Kevin L. Otto (OH), Larry H. Painter (PA), Robert K. Patterson (IA), Alan A. Phillips (WI), Randall D. Pierce (FL), Clyde R. Pitt (NY), Reynier Prieto (FL), Albert R. Purdy (PA), Adam Razny (MO), Thomas F. Scanlon (NJ), Christopher J. Schmidt (PA), Harrison G. Simmons (MO), Cleo W. Snyder (IL), Daniel E. Staack (NE), Scott A. Stout (FL), Walter D. Strang, IV (CT), Mark A. Torres (MA), Gerald L. Ulmer, Sr. (PA), Eric A. Vernon (IA), Paul M. Vinacco (RI), Marvin L. Vonk (IA), Kelly J. Walstad (MN), John R. Wappes (OH), James W. Watson (MO), Gordon E. Williams, Jr. (PA), Ray C. Williams (CT), Ricky A. Wulf (IA), and Brandon S. Yarbrough (NC) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: February 25, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–04823 Filed 3–4–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 558 (Sub-No. 17)]

Railroad Cost of Capital—2013

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision instituting a proceeding to determine the railroad industry's 2013 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2013. The decision solicits comments on the following issues: (1) The railroads' 2013 current cost of debt capital; (2) the railroads' 2013 current cost of preferred equity capital (if any); (3) the railroads' 2013 cost of common equity capital; and (4) the 2013 capital structure mix of the railroad industry on a market value basis. Comments should focus on the various cost of capital components listed above using the same methodology followed in *Railroad Cost of Capital—2012,* EP 558 (Sub-No. 16) (STB served Aug. 30, 2013).

DATES: Notices of intent to participate are due by March 31, 2014. Statements of the railroads are due by April 21, 2014. Statements of other interested persons are due by May 12, 2014. Rebuttal statements by the railroads are due by June 2, 2014.

ADDRESSES: Comments may be submitted either via the Board's e-filing system or in the traditional paper format. Any person using e-filing should comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 558 (Sub-No. 17), 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board's decision is posted on the Board's Web site, *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: February 27, 2014.

By the Board, Chairman Elliott and Vice Chairman Begeman.

Raina S. White,

Clearance Clerk.

[FR Doc. 2014–04855 Filed 3–4–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury 's Office of Foreign Assets Control (''OFAC'') is publishing the names of seven individuals and ten entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (''Kingpin Act'') (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the seven individuals and ten entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on February 27, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On February 27, 2014, the Director of OFAC designated the following seven individuals and ten entities whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. AMARILLAS LOPEZ, Gabriela, Av. de la Mancha # 738 A, Col. Lomas de Zapopan, Zapopan, Jalisco 45130, Mexico; Av. Rio Choix 824, Culiacan, Sinaloa, Mexico; DOB 21 Sep 1979; POB Culiacan, Sinaloa, Mexico; C.U.R.P. AALG790921MSLMPB09 (Mexico) (individual) [SDNTK] (Linked To: CASA DE EMPENO GUADALAJARA, S.A. DE C.V.).
2. CUELLAR HURTADO, Hugo, Av. Artesanos 1498, Colonia Oblatos, Zapopan, Jalisco, Mexico; Calle Paseo de la Pradera 23, Fraccionamiento Royal Country, Zapopan, Jalisco, Mexico; Kr 76 173 45 In 4, Bogota, Colombia; Trv 176 N 56 25, Bogota, Colombia; DOB 18 May 1947; POB Florencia, Caqueta, Colombia; Cedula No. 17622278 (Colombia); C.U.R.P. CUHH470518HNELRG00 (Mexico) (individual) [SDNTK] (Linked To: AGRICOLA Y GANADERA CUEMIR, S.P.R. DE R.I.; Linked To: AGRO Y COMERCIO DE SANTA BARBARA LAGROMER S. EN C.; Linked To: COMPANIA AGRO COMERCIAL CUETA S. EN C.; Linked To: COOPERATIVA AVESTRUZ CUEMIR, S.C. DE R.L. DE C.V.; Linked To: INVERSIONES HUNEL LTDA.; Linked To: CASA COMERCIAL UNI QUINCE COMPRAVENTA).
3. CUELLAR SILVA, John Fredy, Calle Paseo Royal Country 5598–23, Fraccionamiento Royal Country, Zapopan, Jalisco, Mexico; Lopez Cotilla 100 Centro, Guadalajara, Jalisco C.P. 44100, Mexico; DOB 17 May 1976; POB Florencia, Caqueta, Colombia; Cedula No. 79904164 (Colombia); R.F.C. CUSJ760517HNE (Mexico) (individual) [SDNTK] (Linked To: AGRO Y COMERCIO DE SANTA BARBARA LAGROMER S. EN C.; Linked To: COMPANIA AGRO COMERCIAL CUETA S. EN C.; Linked To: INVERSIONES HUNEL LTDA.; Linked To: CASA COMERCIAL ORO RAPIDO; Linked To: CASA DE EMPENO GUADALAJARA, S.A. DE C.V.; Linked To: PRENDA TODO, S.A. DE C.V.).
4. CUELLAR SILVA, Jenny Johanna, Avenida Mexico 3335, Vallarta San

Jorge, Guadalajara, Jalisco 44690, Mexico; Clle 57 N 24 72, Bogota, Colombia; Cometa # 2910, Col. Jardines del Bosque, Guadalajara, Jalisco 44520, Mexico; Prados de los Lirios # 4142, Casa 6, Col. Prados Tepeyac, Zapopan, Jalisco 45050, Mexico; DOB 11 Jul 1980; POB Florencia, Caqueta, Colombia; Cedula No. 52708729 (Colombia) (individual) [SDNTK] (Linked To: AGRO Y COMERCIO DE SANTA BARBARA LAGROMER S. EN C.; Linked To: COMPANIA AGRO COMERCIAL CUETA S. EN C.; Linked To: INVERSIONES HUNEL LTDA.; Linked To: PRENDA TODO, S.A. DE C.V.).

5. CUELLAR SILVA, Victor Hugo; DOB 18 Oct 1985; POB Bogota, Colombia; Cedula No. 1032359750 (Colombia) (individual) [SDNTK] (Linked To: AGRO Y COMERCIO DE SANTA BARBARA LAGROMER S. EN C.; Linked To: COMPANIA AGRO COMERCIAL CUETA S. EN C.; Linked To: INVERSIONES HUNEL LTDA.; Linked To: HOTEL PARAISO RESORT EN ARRENDAMIENTO; Linked To: PRENDA TODO, S.A. DE C.V.).

6. MIRAMONTES GUTIERREZ, Ofelia Margarita, Calle Paseo del Ocelote 161, Fraccionamiento Bugambilias, Zapopan, Jalisco, Mexico; DOB 24 Apr 1968; POB Guadalajara, Jalisco, Mexico; C.U.R.P. MIGO680424MJCRTF03 (Mexico) (individual) [SDNTK] (Linked To: AGRICOLA Y GANADERA CUEMIR, S.P.R. DE R.I.; Linked To: COOPERATIVA AVESTRUZ CUEMIR, S.C. DE R.L. DE C.V.).

7. VARGAS NUNEZ, Lucy Amparo (a.k.a. VARGAS DE CUADROS, Lucy Amparo), Kra 3 N 2B–22, Barrio Los Amigos, El Colegio, Cundinamarca, Colombia; DOB 26 Mar 1958; POB San Pedro, Valle, Colombia; Cedula No. 38858512 (Colombia) (individual) [SDNTK] (Linked To: AGRO Y COMERCIO DE SANTA BARBARA LAGROMER S. EN C.; Linked To: COMPANIA AGRO COMERCIAL CUETA S. EN C.; Linked To: INVERSIONES HUNEL LTDA.).

Entities

1. AGRICOLA Y GANADERA CUEMIR, S.P.R. DE R.I. (a.k.a. RANCHO LA HERRADURA CUEMIR), Av. Prolongacion Vallarta No. 600, Zona Centro, Tlajomulco de Zuniga, Jalisco C.P. 45640, Mexico; Folio Mercantil No. 17919–1 (Mexico) [SDNTK].
2. AGRO Y COMERCIO DE SANTA BARBARA LAGROMER S. EN C., Cl 57 No. 24–72 Of 102 P 2, Bogota, Colombia; NIT # 800016670–7 (Colombia) [SDNTK].
3. CASA COMERCIAL ORO RAPIDO, Cra. 11 # 13–28, Girardot, Cundinamarca, Colombia; Matricula Mercantil No 19022 (Colombia) [SDNTK].
4. CASA COMERCIAL UNI QUINCE COMPRAVENTA, Av. 15 No. 124–09 LC 102, Bogota, Colombia; Matricula Mercantil No 00666561 (Colombia) [SDNTK].
5. CASA DE EMPENO GUADALAJARA, S.A. DE C.V. (a.k.a. EMPENOS PRESTAFACIL), Av. Lopez Cotilla No. 100, Col. Centro, Guadalajara, Jalisco C.P. 44100, Mexico; Av. De La Mancha No. 738, Col. Lomas de Zapopan, Zapopan, Jalisco C.P. 45130, Mexico; R.F.C. CEG–000629–9H7 (Mexico); Folio Mercantil No. 4243–1 (Mexico) [SDNTK].
6. COMPANIA AGRO COMERCIAL CUETA S. EN C., Cl 57 No. 24–72 Local 102, Bogota, Colombia; NIT # 800007394–0 (Colombia) [SDNTK].
7. COOPERATIVA AVESTRUZ CUEMIR, S.C. DE R.L. DE C.V., Av. Prolongacion Vallarta No. 600 A, Zona Centro, Tlajomulco de Zuniga, Jalisco C.P. 45640, Mexico; Folio Mercantil No. 42877–1 (Mexico) [SDNTK].
8. HOTEL PARAISO RESORT EN ARRENDAMIENTO, Calle 3 No. 1–33/17, Rivera, Huila, Colombia; Matricula Mercantil No 0000104026 (Colombia) [SDNTK].
9. INVERSIONES HUNEL LTDA., Cl 57 No. 24–72, Bogota, Colombia; NIT # 800223039–6 (Colombia) [SDNTK].
10. PRENDA TODO, S.A. DE C.V. (a.k.a. CASA DE EMPENO PRENDA TODO), Andador Medrano 2845, Guadalajara Centro, Guadalajara, Jalisco 44100, Mexico; Medrano # 2845, Col. San Andres, Guadalajara, Jalisco C.P. 44410, Mexico; Zacarias Rubio No. 1609, San Miguel de Huentitan El Alto, Guadalajara, Jalisco 44780, Mexico; R.F.C. PTO000504DM5 (Mexico); Folio Mercantil No. 4495–1 (Mexico) [SDNTK].

Dated: February 27, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2014–04818 Filed 3–4–14; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Jaguar; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0042; 4500030114]

RIN 1018–AX13

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Jaguar

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the jaguar (*Panthera onca*) under the Endangered Species Act, as amended. In total, approximately 309,263 hectares (764,207 acres) in Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico, fall within the boundaries of the critical habitat designation. This designation fulfills our obligations under a settlement agreement. The effect of this regulation is to designate critical habitat for jaguar under the Endangered Species Act.

DATES: This rule is effective on April 4, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.fws.gov/southwest/es/arizona/Jaguar.htm,* and at *http://www.regulations.gov.* Comments and materials received, as well as some supporting documentation we used in preparing this final rule, including the final economic analysis and final environmental assessment, are available for public inspection at *http://www.regulations.gov.* Some supporting documentation is also available at *http://www.fws.gov/southwest/es/arizona/Jaguar.htm.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Arizona Ecological Services Fish and Wildlife Office, 2321 West Royal Palm Drive, Suite 103, Phoenix, AZ 85021; telephone 602–242–0210. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0042, and at the Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT).** Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Fish and Wildlife Office, 2321 West Royal Palm Drive, Suite 103, Phoenix, AZ 85021; telephone 602–242–0210. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a final rule to designate critical habitat for the jaguar. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

We, the U.S. Fish and Wildlife Service (Service), listed the jaguar as an endangered species on March 30, 1972 (37 FR 6476), in accordance with the Endangered Species Conservation Act of 1969, a precursor to the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 et seq.). On August 20, 2012, we published in the **Federal Register** a proposed critical habitat designation for jaguar (77 FR 50213). 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.

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 jaguar. Here we are designating approximately 309,263 hectares (ha) (764,207 acres (ac)) in Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico, in six critical habitat units.

- Unit 1, Baboquivari Unit, approximately 25,549 ha (63,134 ac) Baboquivari, Saucito, Quinlan, and Coyote Mountains in Pima County, Arizona.
- Unit 2, Atascosa Unit, approximately 58,624 ha (144,865 ac) in the Tumacacori, Atascosa, and Pajarito Mountains, in Pima and Santa Cruz Counties, Arizona.
- Unit 3, Patagonia Unit, approximately 142,248 ha (351,501 ac) in the Santa Rita, Patagonia, Empire, and Huachuca Mountains, and Grosvenor and Canelo Hills, in Pima, Santa Cruz, and Cochise Counties, Arizona.
- Unit 4, Whetstone Unit, approximately 38,149 ha (94,269 ac) in the Whetstone Mountains, including connections to the Empire, Santa Rita and Huachuca Mountains, in Pima, Santa Cruz, and Cochise Counties, Arizona.
- Unit 5, Peloncillo Unit, approximately 41,571 ha (102,724 ac) in the Peloncillo Mountains, in Cochise County, Arizona, and Hidalgo County, New Mexico.
- Unit 6, San Luis Unit, approximately 3,122 ha (7,714 ac) in the San Luis Mountains, Hidalgo County, New Mexico.

This rule consists of: A final rule for designation of critical habitat for the jaguar. The jaguar is already listed under the Act. This rule designates critical habitat essential for the conservation of the species.

We have prepared an economic analysis and environmental assessment of the designation of critical habitat. In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designation and related factors. We have also completed an environmental assessment to evaluate whether there would be any significant environmental impacts as a result of the critical habitat designation. We announced the availability of both the draft economic analysis and draft environmental assessment in the **Federal Register** on July 1, 2013 (78 FR 39237), allowing the public to provide comments on our analyses. We have incorporated the comments and have completed the final economic analysis and final environmental assessment with this final determination.

Peer review and public comment. We sought comments from seven independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from six knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, and whether or not we had used the best available information. Most of the peer reviewers (five of the six) generally concurred with our methods and

conclusions and provided additional information, clarifications, and suggestions to improve this final rule. One peer reviewer was against critical habitat designation for the jaguar, stating that there is no habitat in the United States at this time that is critical to the survival of the jaguar as a species. Information we received from peer review is incorporated in this final revised designation. We also considered all comments and information received from the public during the comment period.

Previous Federal Actions

On August 20, 2012, we published in the **Federal Register** a proposed rule to designate critical habitat for the jaguar (77 FR 50214). In that proposed rule, we proposed to designate approximately 339,220 ha (838,232 ac) as critical habitat in six units located in Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico. The comment period opened August 20, 2012, and closed October 19, 2012.

On March 12, 2013, we received a report from the Jaguar Recovery Team (described later in this document) entitled Jaguar Habitat Modeling and Database Update (Sanderson and Fisher 2013, entire) that included a revised habitat model for the jaguar in the proposed Northwestern Recovery Unit. This report recommended defining habitat patches of less than 100 square kilometers (km^2) (38.6 square miles (mi^2)) in size as unsuitable for jaguars; therefore, we incorporated this information into the physical and biological feature for the jaguar, which formerly described areas of less than 84 km^2 (32.4 mi^2) as unsuitable. Additionally, the report recommended slight changes to some of the habitat features we used to describe the primary constituent elements (PCEs) comprising jaguar critical habitat (see Summary of Changes from Proposed Rule, above). The revised physical and biological feature and PCEs resulted in changes to the boundaries of our original proposed critical habitat.

On July 1, 2013 (78 FR 39237), we announced the revisions described above to our proposed designation of critical habitat for the jaguar, which now included approximately 347,277 ha (858,137 ac) as critical habitat in six units located in Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico. We also announced the availability of a draft economic analysis and draft environmental assessment of the revised proposed designation of critical habitat for jaguar and an amended required determinations section of the proposal. Additionally, we announced the reopening of the comment period. The comment period opened July 1, 2013, and closed August 9, 2013.

On August 15, 2013, the U.S. District Court for the District of Columbia granted the Service's motion to extend the deadline for publishing a final critical habitat designation for the jaguar to December 16, 2013. This rescheduled final rulemaking date allowed us to reopen the public comment period again, for which we had received multiple requests. On August 29, 2013 (78 FR 53390), we announced the reopening of the comment period for an additional 15 days. The comment period opened August 29, 2013, and closed September 13, 2013.

All previous Federal actions are described in the proposal and revised proposal to designate critical habitat for the jaguar under the Act published in the **Federal Register** (77 FR 50214; August 20, 2012 and 78 FR 39237; July 1, 2013, respectively) and the final rule clarifying the status of the jaguar in the United States (62 FR 39147; July 22, 1997).

Background

Below we provide a general discussion of jaguar habitat requirements. Additional background information on the jaguar, beyond what is provided below, can be found in the proposed jaguar critical habitat designation published in the **Federal Register** on August 20, 2012 (77 FR 50214), the revisions to our proposed designation of critical habitat for the jaguar published in the **Federal Register** on July 1, 2013 (78 FR 39237), and this final rule clarifying the status of the jaguar in the United States (62 FR 39147; July 22, 1997).

Jaguar Habitat Requirements in the United States and U.S.-Mexico Borderlands Area

Most of the information regarding jaguar habitat requirements comes from Central and South America; little, if any, is available for the northwestern-most portion of its range, including the United States. Jaguar habitat available in the U.S.-Mexico borderlands area is quite different from habitat in Central and South America, where jaguars show a high affinity for lowland wet communities, including swampy savannas or tropical rain forests toward and at middle latitudes. Swank and Teer (1989, p. 14) state that jaguars prefer a warm, tropical climate, usually associated with water, and are rarely found in extensive arid areas. Rabinowitz (1999, p. 97) affirms that the most robust jaguar populations have been associated with tropical climates in areas of low elevation with dense cover and year-round water sources. Brown and López González (2001, p. 43) further state that, in South and Central America, jaguars usually avoid open country like grasslands or desertscrub, instead preferring the closed vegetative structure of nearly every tropical forest type.

However, jaguars have been documented in arid areas of northwestern Mexico and the southwestern United States, including thornscrub, desertscrub, lowland desert, mesquite grassland, Madrean oak woodland, and pine-oak woodland communities (Brown and López González 2001, pp. 43–50; Boydston and López González 2005, p. 54; McCain and Childs 2008, p. 7; Rosas-Rosas and Bender 2012, p. 88). The more open, dry habitat of the southwestern United States has been characterized as marginal habitat for jaguars in terms of water, cover, and prey densities (Rabinowitz 1999, p. 97). However, McCain and Childs (2008, p. 7) documented two male jaguars (and possibly a third) using an extensive area including habitats of the Sonoran lowland desert, Sonoran desertscrub, mesquite grassland, Madrean oak woodland, and pine-oak woodland in mountain ranges in southern Arizona. Additionally, another male jaguar has been documented utilizing Madrean evergreen woodland habitat in southern Arizona from 2011 through 2013 (see Table 1 in the ''Class I Records'' section, below). Therefore, while habitat in the United States can be considered marginal when compared to other areas throughout the species' range, it appears that a few, possibly resident jaguars are able to use the more open, arid habitat found in the southwestern United States.

Jaguar Recovery Planning in Relation to Critical Habitat

Information currently available for northern jaguars is scant; therefore, we convened a binational Jaguar Recovery Team team in 2010 to synthesize information on the jaguar, focusing on a unit comprising jaguars in the northernmost portion of their range, the proposed Northwestern Recovery Unit. The team comprises members from the United States and Mexico, and is composed of two subgroups: A technical subgroup and an implementation subgroup. Both subgroups have nearly equal representation from the United States and Mexico. The technical subgroup consists of feline ecologists, conservation biologists, and other

experts, who advise the Jaguar Recovery Team and the Service on appropriate short- and long-term actions necessary to recover the jaguar. The implementation subgroup consists of members who advise the technical subgroup and the Service on ways to achieve timely recovery with minimal social and economic impacts or costs. Specifically, the implementation subgroup consists of landowners and land and wildlife managers from Federal, state, tribal, and private entities. The Jaguar Recovery Team has two co-leaders, one from the United States and one from Mexico; both are members of the technical subgroup, though they serve as co-leaders for the entire Jaguar Recovery Team.

In April 2012, the Jaguar Recovery Team produced the Recovery Outline for the Jaguar. The Recovery Outline serves as an interim guidance document to direct recovery efforts, including recovery planning, for the jaguar until a full recovery plan is developed and approved (a draft recovery plan for the jaguar is expected to be completed in spring 2014). It includes a preliminary strategy for recovery of the species, and recommends high-priority actions to stabilize and recover the species. The Recovery Outline delineates two recovery units for the species, the Northwestern Recovery Unit (encompassing the United States and northwestern Mexico) and the Pan American Recovery Unit (encompassing the rest of the range). The recovery units are further divided into core or secondary areas. Lands within the United States are a part of the Borderlands Secondary Area within the proposed Northwestern Recovery Unit (Sanderson and Fisher 2013, p. 10; note that this map updates the map of the Northwestern Recovery Unit shown on p. 58 of the Recovery Outline for the Jaguar).

The Borderlands Secondary Area within the proposed Northwestern Recovery Unit for the jaguar (Jaguar Recovery Team 2012, p. 58; Sanderson and Fisher 2013, p. 10) is only a small portion of the jaguar's range. Because such a small portion occurs in the United States, researchers anticipate that recovery of the entire species will rely primarily on actions that occur outside of the United States; activities that may adversely or beneficially affect jaguars in the United States are less likely to affect recovery than activities in core areas of their range (Jaguar Recovery Team 2012, p. 38). However, the portion of the United States is located within a secondary area that provides a recovery function benefitting the overall recovery unit (Jaguar Recovery Team 2012, pp. 40, 42). For example, specific areas within this secondary area that provide the physical and biological features essential to jaguar habitat can contribute to the species' persistence and, therefore, overall conservation. These areas support some individuals during dispersal movements, provide small patches of habitat (perhaps in some cases with a few resident jaguars), and provide areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit (about 210 km (130 mi) south of the U.S.-Mexico border in Sonora near the towns of Huasabas, Sahuaripa (Brown and López González 2001, pp. 108–109), and Nacori Chico (Rosas-Rosas and Bender 2012, pp. 88–89)).

Independent peer review cited in our July 22, 1997, clarifying rule (62 FR 39147, pp. 39153–39154) states that individuals dispersing into the United States are important because they occupy habitat that serves as a buffer to zones of regular reproduction and are potential colonizers of vacant range, and that, as such, areas supporting them are important to maintaining normal demographics, as well as allowing for possible range expansion. As described in the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, pp. 40, 42), the Northwestern Recovery Unit is essential for the conservation of the species; therefore, consideration of the spatial and biological dynamics that allow this unit to function and that benefit the overall unit is prudent. Providing connectivity from the United States to Mexico is a key element to maintaining those processes.

Additionally, as thoroughly discussed in the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, pp. 19–20) and Johnson *et al.* (2011, pp. 30–31), populations at the edge of a species' range play a role in maintaining the total genetic diversity of a species; in some cases, these peripheral populations persist the longest as fragmentation and habitat loss impact the total range (Channell and Lomolino 2000, pp. 84–85). The United States and northwestern Mexico represent the northernmost extent of the jaguar's current range, with populations persisting in one of only four distinct xeric (extremely dry) habitats that occur within the species' range (Sanderson *et al.* 2002, Appendix 1). Peripheral populations such as these are an important genetic resource in that they may be beneficial to the protection of evolutionary processes and the environmental systems that are likely to generate future evolutionary diversity (Lesica and Allendorf 1995, entire). This may be particularly important considering the potential threats of global climate change (see ''Climate Change,'' below). The ability for jaguars in the proposed Northwestern Recovery Unit to utilize physical and biological habitat features in the borderlands region is ecologically important to the recovery of the species; therefore, maintaining connectivity to Mexico is essential to the conservation of the jaguar.

Through an iterative process incorporating new information and expert opinion (as described in the Jaguar Habitat Modeling and Database Update report produced by Sanderson and Fisher (2013, entire)), the Jaguar Recovery Team developed and refined the habitat requirements for jaguars in the proposed Northwestern Recovery Unit. For the portion of this recovery unit encompassing the United States, the habitat features providing jaguar habitat include areas of at least 100 km^2 (38.6 mi^2) in size (the minimum area necessary to support one jaguar) in which can be found: (1) Tree cover from greater than 1 to 50 percent; (2) intermediately, moderately, or highly rugged terrain; (3) water within 10 km (6.2 mi); (4) an elevation of less than 2,000 meters (m) (6,562 feet (ft)); (5) Sierra Madre Occidental pine-oak forests; and (6) a Human Influence Index (HII) of less than 20 (habitat factors, habitat types, and masks as described in Sanderson and Fisher 2013, pp. 33–34, 38, and 41). Therefore, we are basing our definition of jaguar habitat in the United States on these features (see *Physical or Biological Features,* below).

Summary of Changes From Proposed Rule

In developing the final jaguar critical habitat designation, we reviewed public comments received on the proposed rule (77 FR 50214; August 20, 2012), the revision to the proposed rule, the draft economic analysis, and the draft environmental assessment (78 FR 39237; July 1, 2013 and 78 FR 53390; August 29, 2013).

On August 20, 2012, we published in the **Federal Register** a proposed rule to designate critical habitat for the jaguar (77 FR 50214). We based the physical and biological feature and PCEs on a preliminary habitat modeling report we received from the Jaguar Recovery Team in 2011 entitled Jaguar Habitat Modeling and Database (Sanderson and Fisher 2011, pp. 1–11), in which the habitat features preferred by the jaguar in the proposed Northwestern Recovery Unit were described based on the best

available science and expert opinion of the Jaguar Recovery Team at that time.

In our revised proposed rule we modified the critical habitat boundaries based on new information received. Since August 20, 2012, the Jaguar Recovery Team continued to revise and refine the habitat features preferred by the jaguar through an iterative process based on additional information and expert opinion, resulting in an updated habitat modeling report entitled Jaguar Habitat Modeling and Database Update (Sanderson and Fisher 2013, entire) that we received on March 12, 2013. Changes to habitat features preferred by jaguars in the proposed Northwestern Recovery Unit included: (1) Defining habitat patches of less than 100 km^2 (38.6 mi^2) in size as too small to support a jaguar (the physical and biological feature formerly described areas of less than 84 km^2 (32.4 mi^2) as too small); (2) a canopy cover from greater than 1 to 50 percent as suitable in the northern part of the proposed Northwestern Recovery Unit (PCE 4 formerly included a range of 3 to 40 percent canopy cover); (3) delineating areas 2,000 m (6,562 ft) and higher as unsuitable (previously there was no PCE related to an upper-elevation limit); and (4) slightly diminishing (from up to or equal to 20 to less than 20) the level of the HII tolerated by jaguars in the northern part of the proposed Northwestern Recovery Unit (formerly PCE 6, now PCE 7). When combined and analyzed with a geographic information system (GIS), these changes added some new areas containing all of the PCEs, while other areas no longer contained all of the PCEs and, therefore, were removed (see *Primary Constituent Elements for Jaguar,* below, for further information). An increase in area was usually due to the increased range in canopy cover (from greater than 1 to 50 percent, instead of 3 to 40 percent), while a decrease in area was usually due to the upper elevation limit of 2,000 m (6,562 ft).

In addition to the changes described above, multiple photos of a jaguar in the Santa Rita Mountains taken since our August 20, 2012 (77 FR 50214), proposed designation provided additional information about the occupancy status of Unit 3 (Patagonia Unit) of jaguar critical habitat, which formerly contained only one jaguar record in the Patagonia Mountains from 1965 (see Table 1 in the ''Class I Records'' section, below). While our understanding of the habitat features did not change drastically between 2012 and 2013, the combination of a slightly different physical and biological feature and several PCEs (as described above) and the recent jaguar sightings resulted in the changes noted in our July 1, 2013 (78 FR 39237), proposed rule.

In this final rule we are making the following changes. We are excluding and exempting areas from the final designation pursuant to sections 4(b)(2) and 4(a)(3) of the Act, respectively. We are excluding lands owned and managed by the Tohono O'odham Nation, and we are exempting lands owned and managed by Fort Huachuca. Figure 1 displays the excluded and exempted areas in relation to the final critical habitat designation. The exclusion of Tohono O'odham Nation lands in Unit 1 resulted in the appearance of five disconnected areas of land in Subunit 1a and of two disconnected areas of land in Subunit 1b. Figure 2 is a magnified view of Unit 1 displaying the excluded areas in relation to critical habitat for Unit 1. These areas that appear disconnected are not in fact disjunct, as there is continued jaguar habitat within the excluded areas that provides continuity and connectivity among the areas that appear disconnected. The exemption of Fort Huachuca did not result in the appearance of any disconnected areas. (See the Final Critical Habitat Designation section, below, for additional information).

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FIGURE 1.—Overview of critical habitat for the jaguar showing areas that have been exempted and excluded from the designation.

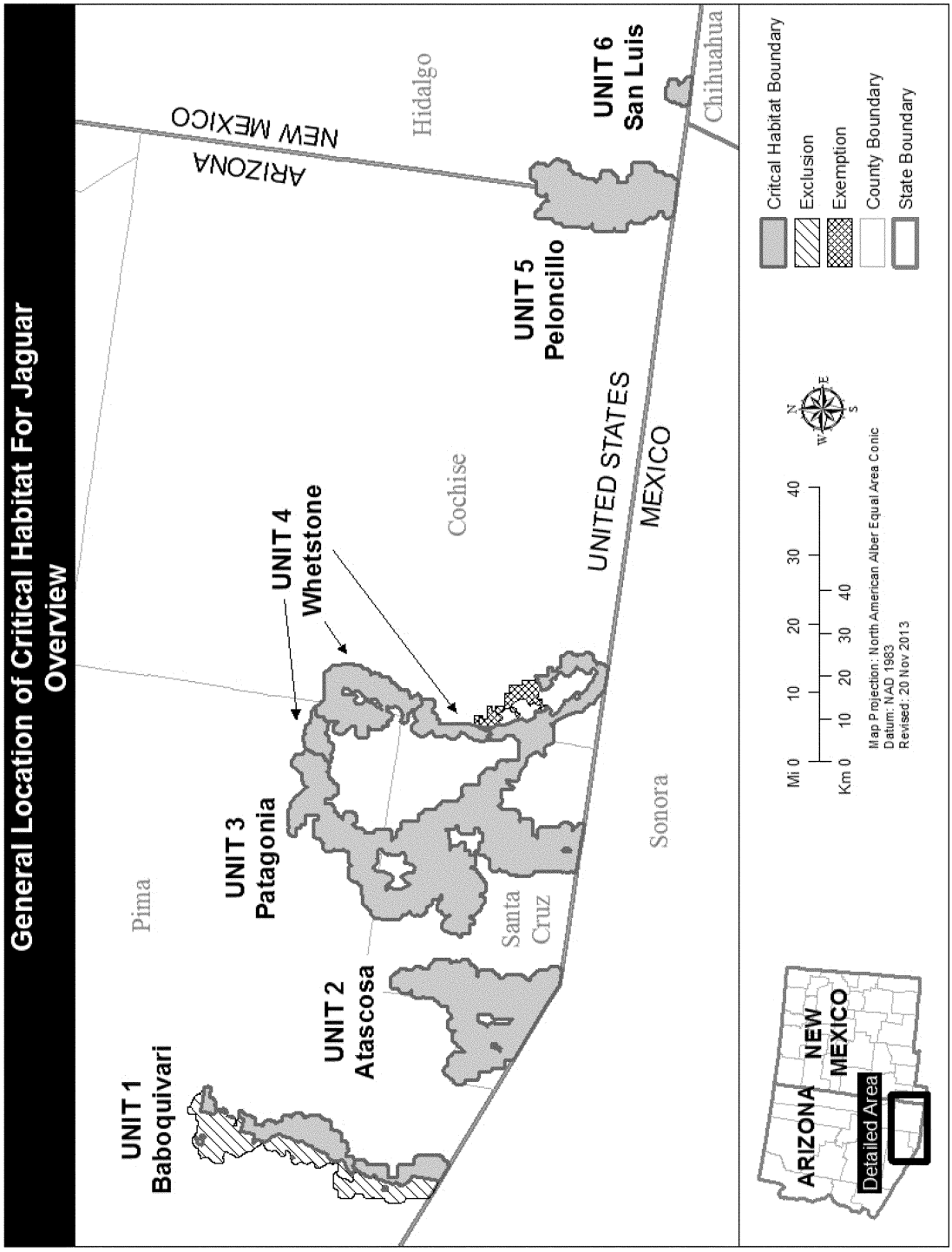
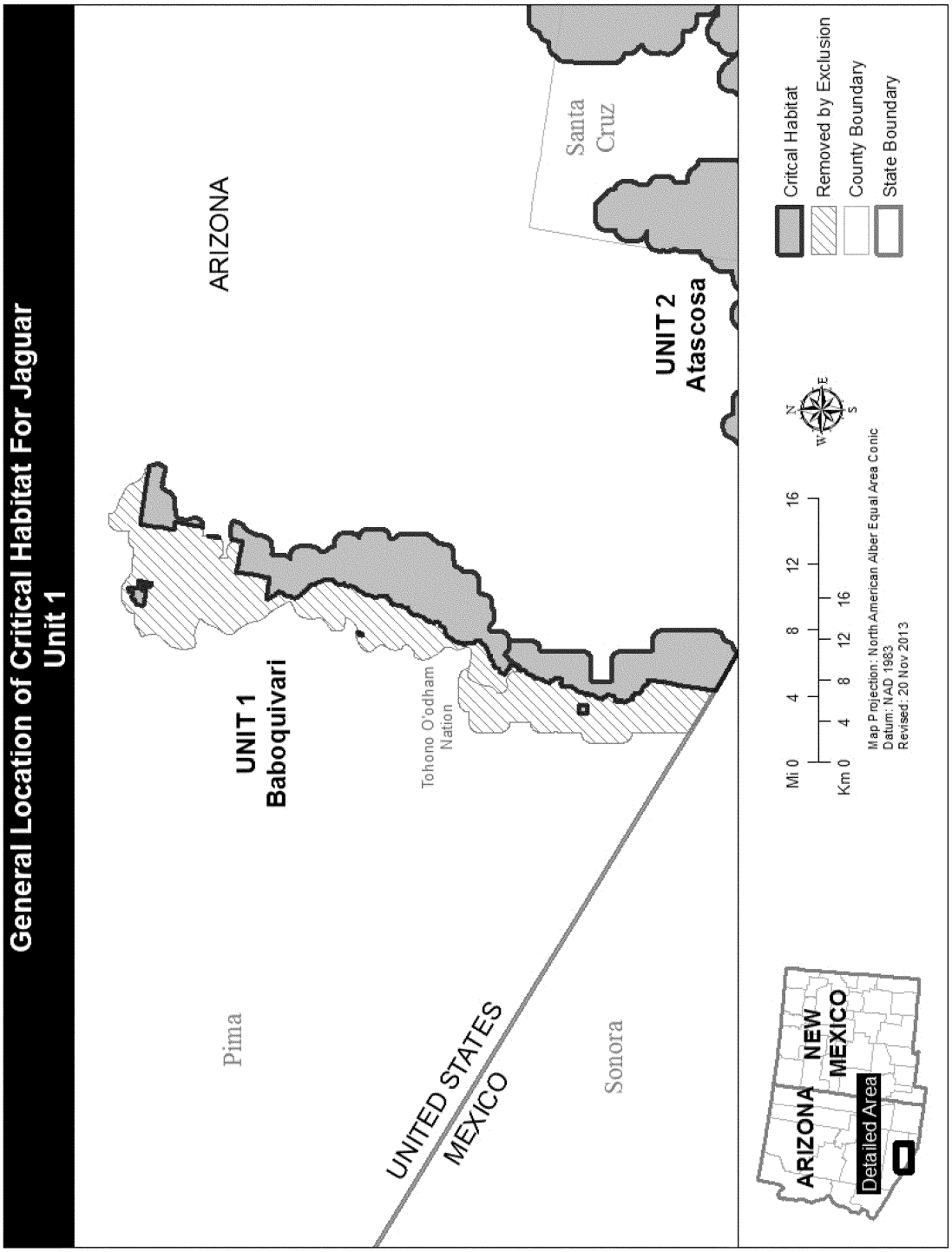


FIGURE 2.—Critical habitat for the jaguar in Unit 1 showing areas that have been excluded from the designation.



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Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are

found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific 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 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. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second 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. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

In the following sections we will define the regulatory terms in the definition of critical habitat, as they apply to the jaguar, and then explain how the critical habitat boundaries were developed based on the application of these terms.

Occupied Area at the Time of Listing

Determining jaguar occupancy at the time of listing is particularly difficult. Jaguars were added to the list many years ago, and, by nature, are cryptic

and difficult to detect, so assuming an area is occupied or unoccupied must be based on limited information that can be interpreted in several ways. Based on our analysis, we are including areas as occupied that contain an undisputed Class I record at some time between 1962 to the present (September 11, 2013). However, we acknowledge the uncertainty and lack of concrete information (undisputed Class I records, described below) during the period we are defining as occupied at the time of listing. Therefore, we have further evaluated these areas and have also determined these areas to be essential to the conservation of the jaguar. Our rationale for this approach is explained in the following sections.

Class I Records

Reports of jaguar sightings are sorted into multiple ''classes'' based on the degree of certainty that a jaguar was sighted. We are only considering undisputed Class I reports as valid records of jaguar locations. Class I reports are those for which some sort of physical evidence is provided for verification (such as a skin, skull, or photograph); they are considered ''verified'' or ''highly probable'' as evidence for a jaguar occurrence. Class II records have detailed information of the observation provided but do not include any physical evidence of a jaguar. Class II observations are considered ''probable'' or ''possible'' as evidence for a jaguar occurrence. This classification protocol was developed by adapting criteria published by Tewes and Everett (1986, entire), based on work in Texas with jaguarundis and ocelots (*Leopardus pardalis*). The Arizona-New Mexico Jaguar Conservation Team (for a description and history of this team, see Johnson *et al.* 2011, pp. 37–40) reviewed and endorsed the protocol in 1998 for use in evaluating jaguar occurrence reports for Arizona and New Mexico. Therefore, we are using the same criteria to evaluate jaguar occurrence reports in the United States, and consider undisputed Class I records as the best available information. Table 1 summarizes these records, below.

TABLE 1—UNDISPUTED CLASS I* JAGUAR RECORDS FOR ARIZONA AND NEW MEXICO USED FOR PURPOSES OF DETERMINING OCCUPANCY OF JAGUAR CRITICAL HABITAT, 1962–SEPTEMBER 11, 2013

Date	Collector	Sex	Location	Circumstance/documentation	Biotic community	Information source
2013: 9/11, 8/1, 6/17, 5/31, 5/29, 5/17, 5/11, 4/27, 1/16.	University of Arizona	Male (same as 2011 male based on pelage comparison).	Santa Rita Mountains.	Trail camera photographs.	Madrean evergreen woodland, semidesert grassland.	USFWS Flickr site: *http://bit.ly/TapYhK.*
2012: 12/31, 11/11, 11/10, 10/25.	University of Arizona	Male (same as 2011 male based on pelage comparison).	Santa Rita Mountains.	Trail camera photographs.	Madrean evergreen woodland, semidesert grassland.	USFWS Flickr site: *http://bit.ly/TapYhK.*
2012: 9/23	AGFD	Male (same as 2011 male based on pelage comparison).	Santa Rita Mountains.	Trail camera photograph.	Semidesert grassland.	USFWS: *http://www.fws.gov/southwest/es/arizona/Documents/SpeciesDocs/Jaguar/fNR-jaguar-pics_Dec_2012B.docx.pdf.*
2011: 11/19	D Fenn	Male (5th unique AZ-NM jaguar since 1996).	Whetstone Mountains.	Treed by hunting dogs; photos and video.	Madrean evergreen woodland.	AGFD: *http://www.azgfd.gov/w_c/jaguar/documents/Web%20Release%20jag%20reports%202012.02.24.pdf.*
2008: 8/2	J Childs and E McCain.	Male (Macho B)	Atascosa Mountains	Trail camera photograph.	Madrean evergreen woodland.	J Childs and E McCain, BJDP unpubl. data.
2008: 7/29	J Childs and E McCain.	Unknown or Male (Macho B).	Tumacacori Mountains.	Trail camera photograph (photo too fuzzy to identify jaguar).	Semidesert grassland.	J Childs and E McCain, BJDP unpubl. data.
2007: 7/25, 5/7, 4/25, 4/22, 4/21, 4/3, 3/27, 3/26, 3/25, 3/7, 2/22, 2/12, 2/9, 1/25, 1/22, 1/19, 1/10, 1/1.	J Childs and E McCain.	Male (Macho B)	Coyote Mountains, Baboquivari Mountains.	Trail camera photographs, video, tracks.	Madrean evergreen woodland, semidesert grassland.	J Childs and E McCain, BJDP unpubl. data; see also McCain and Childs 2008, pp. 3, 7.
2007: 2/22	J Childs and E McCain.	Male (Macho B)	Baboquivari Mountains.	500-lb calf depredation.	Madrean evergreen woodland.	J Childs and E McCain, BJDP unpubl. data; see also McCain and Childs 2008, pp. 3, 7.
2006: 12/29, 12/3, 11/20, 10/18, 10/15, 9/26, 6/9, 5/31, 5/27, 5/23, 5/21, 5/14, 5/13, 5/12, 5/10, 5/6, 5/5, 5/4, 5/2, 4/30, 4/28, 4/27, 4/23, 4/18, 4/3, 3/30, 3/27, 3/26.	J Childs and E McCain.	Male (Macho B)	Coyote Mountains, Baboquivari Mountains, Atascosa Mountains.	Trail camera photographs, video, tracks.	Madrean evergreen woodland, semidesert grassland, Sonoran desertscrub.	J Childs and E McCain, BJDP unpubl. data; see also McCain and Childs 2008, pp. 3, 7.
2006: 2/20	W Glenn	Male (4th unique AZ-NM jaguar since 1996).	South of Animas Mountains on north end of San Luis Mountains.	Photographs	Madrean evergreen woodland.	AGFD unpubl. data; Childs and Childs 2008, p. 95.

TABLE 1—UNDISPUTED CLASS I* JAGUAR RECORDS FOR ARIZONA AND NEW MEXICO USED FOR PURPOSES OF DETERMINING OCCUPANCY OF JAGUAR CRITICAL HABITAT, 1962–SEPTEMBER 11, 2013—Continued

Date	Collector	Sex	Location	Circumstance/documentation	Biotic community	Information source
2005: 12/17, 12/12, 11/18, 11/17, 11/16, 11/6, 11/5, 11/4, 7/29, 7/28, 7/26, 7/3, 6/8, 6/3, 1/12, 1/2.	J Childs and E McCain.	Male (Macho B)	Tumacacori Mountains, Atascosa Mountains.	Trail camera photographs and tracks.	Madrean evergreen woodland, semidesert grassland.	J Childs and E McCain, BJDP unpubl. data; see also McCain and Childs 2008, pp. 3, 7.
2005: 9/26, 7/11	J Childs and E McCain.	Unknown	Atascosa Mountains	Tracks	Madrean evergreen woodland.	J Childs and E McCain, BJDP unpubl. data; see also McCain and Childs 2008, pp. 3, 7.
2004: 12/31, 12/29, 12/27, 12/19, 12/17, 12/12, 11/28, 11/8, 10/27, 9/26, 8/31.	J Childs and E McCain.	Male (Macho B)	Atascosa Mountains	Trail camera photographs and track.	Madrean evergreen woodland, semidesert grassland.	J Childs and E McCain, BJDP unpubl. data; see also McCain and Childs 2008, pp. 3, 7.
2004: 12/7, 9/12, 6/24	J Childs and E McCain.	Unknown (possibly Macho A or possible 6th unique AZ-NM jaguar since 1996).	Atascosa Mountains	Trail camera photographs and track.	Madrean evergreen woodland.	J Childs and E McCain, BJDP unpubl. data; see also McCain and Childs 2008, pp. 3, 7; and McCain and Childs 2008, p. 5 for a description of why this individual could be Macho A or possibly another unique jaguar.
2004: 9/25	J Childs and E McCain.	Male (Macho A)	Atascosa Mountains	Trail camera photograph.	Madrean evergreen woodland.	J Childs and E McCain, BJDP unpubl. data; see also McCain and Childs 2008, pp. 3, 7.
2003: 8/7	J Childs and E McCain.	Male (Macho A)	Atascosa Mountains	Trail camera photograph.	Madrean evergreen woodland.	J Childs and E McCain, BJDP unpubl. data; see also McCain and Childs 2008, pp. 3, 7.
2001: 12/9	J Childs and E McCain.	Male (Macho A; 3rd unique jaguar since 1996).	Atascosa Mountains	Trail camera photograph.	Madrean evergreen woodland.	J Childs and E McCain, BJDP unpubl. data; see also McCain and Childs 2008, pp. 3, 7.
1996: 8/31	J Childs	Male (Macho B; 2nd unique AZ-NM jaguar since 1996).	Baboquivari Mountains.	Treed while lion hunting; photographs.	Madrean evergreen woodland.	Brown and López González 2001, p. 7, McCain and Childs 2008, p. 2.
1996: 3/7	W Glenn	Male (1st unique AZ-NM jaguar since 1996).	Peloncillo Mountains	Bayed while lion hunting with dogs; photographs.	Madrean evergreen woodland.	Glenn 1996; Brown and López González 2001, p. 6.
1995: 4/19	B Starrett	Unknown	Peloncillo Mountains	Photograph of track	Madrean evergreen woodland.	AGFD unpubl. data; NMDGF unpubl. data.
1986: 12	J Klump	Male	Dos Cabezas Mountains.	Bayed and killed while lion hunting with dogs.	Madrean evergreen woodland.	Brown and López González 2001, p. 7.
1971: 11/16	R Farley and T Cartier.	Male	Santa Cruz River	Killed by boys duck hunting with shotguns.	Madrean evergreen woodland, semidesert grassland.	Brown and López González 2001, p. 7.
1965: 11/16	L McGee	Male	Patagonia Mountains	Shot while deer hunting.	Madrean evergreen woodland.	Brown and López González 2001, p. 7.

*Physical evidence (e.g., skin, skull, photograph, track) was reviewed and accepted by the Arizona Game and Fish Department (AGFD), New Mexico Department of Game and Fish (NMDGF), or other credible person(s). (BJDP=Borderlands Jaguar Detection Project).

There are several disputed Class I jaguar records from 1962 forward that we are not considering in our analysis. One of these is a female shot on September 28, 1963, in the White Mountains of east-central Arizona, and another is a male trapped on January 16, 1964, near the Black River in east-central Arizona (Brown and López González 2001, p. 7). As described in Johnson *et al.* (2011, p. 9), as well as from information provided during the

public comment period on our August 20, 2012, proposed critical habitat designation (77 FR 50214), the validity of these locations is questionable because of the suspicion that these animals were released for ''canned hunts'' (hunts involving release of captive animals). Therefore, we are not including them as undisputed Class I records. The other exceptions are any records of the jaguar known as Macho B dating from October 3, 2008, until his final capture on March 2, 2009. We have determined that it is within this timeframe that female jaguar scat may have been used as scent lure at some trail camera locations within the Coronado National Forest that may have affected his behavior; therefore, we are not including these observations as undisputed Class I records.

Time of Listing

While the jaguar was not explicitly listed in the United States until July 22, 1997 (62 FR 39147), we are using the date the jaguar was listed throughout its range as endangered in accordance with the Endangered Species Conservation Act, which is March 30, 1972 (37 FR 6476). Our rationale for using this date is based on our July 25, 1979, publication (44 FR 43705) in which we asserted that it was always the intent of the Service that all populations of seven species, including the jaguar, deserved to be listed as endangered, whether they occurred in the United States or in foreign countries. Therefore, our intention was to consider the jaguar endangered throughout its entire range when it was listed as endangered in 1972, rather than only outside of the United States.

Occupancy at the Time of Listing

We are including areas in which reports of jaguar exist during the 10 years prior to its listing as occupied at the time of listing, meaning we are considering records back to 1962. Our rationale for including these records is based on expert opinion regarding the average lifespan of the jaguar, the consensus being 10 years. Therefore, we assume that areas that would have been considered occupied at the time of listing would have included sightings 10 years prior to its listing, as presumably these areas were still inhabited by jaguars when the species was listed in 1972.

For this same reason, we are including areas as occupied at the time of listing in which reports of jaguar exist during the 10 years after listing, meaning we are considering records up to 1982. If jaguars were present in an area within 10 years after the time of listing (1972), presumably these areas would have been inhabited by jaguars when the species was listed in 1972.

Additionally, we are including areas as occupied in which reports of jaguars exist from 1982 to the present. Our reasoning for including areas in which sightings have occurred after 1982 is that it is likely those areas were occupied at the time of the original listing, but jaguars had not been detected because of their rarity, the difficulty in detecting them, and a lack of surveys for the species, as described below.

Reduced Jaguar Numbers

By the time the jaguar was listed in 1972, the species was rare within the United States, making those individuals that may have been present more difficult to detect. The gradual decline of the jaguar in the southwestern United States was concurrent with predator control measures associated with the settlement of land and the development of the cattle industry (Brown 1983, p. 460). For example, from 1900 to 1949, 53 jaguars were recorded as killed in the Southwest, whereas only 4 were recorded as killed between 1950 and 1979 (Brown 1983, p. 460). When a species is rare on the landscape, individuals are difficult to detect because they are sparsely distributed over a large area (McDonald 2004, p. 11).

Jaguars, in particular, are territorial and require expansive open spaces for each individual, meaning large areas may be occupied by just a few individuals, thus reducing the likelihood of detecting them. As evidence, only six, possibly seven, individual jaguars have been detected in the United States since 1982 (five, possibly six, individuals since 1996, as well as the jaguar shot in the Dos Cabezas Mountains in 1986; see Table 1, above), including two that have been documented utilizing two distinct mountain ranges, one of which encompassed approximately 1,359 km^2 (525 mi^2) (McCain and Childs 2008, entire) (see ''Space for Individual and Population Growth and for Normal Behavior'' section, below). Therefore, we believe that undisputed Class I records within mountain ranges from 1982 to the present indicate that these mountain ranges were likely occupied by transient jaguars from Mexico at the time the species was listed, but individuals remained undetected due to the jaguar's ability to move long distances within and between mountain ranges.

Jaguar Detection Difficulty

In addition to lowered detection probabilities (the probability of detecting a jaguar when present) resulting from the rarity of animals, many mobile species are difficult to detect in the wild because of morphological features (such as camouflaged appearance) or elusive behavioral characteristics (such as nocturnal activity) (Peterson and Bayley 2004, pp. 173, 175), as is the case for the jaguar. This fact presents challenges in determining whether or not a particular area is occupied because we cannot be sure that a lack of detection indicates that the species is absent (Peterson and Bayley 2004, p. 173).

For example, the Sonoran desert tortoise is difficult to monitor in the wild because of its slow movement and camouflaged appearance, especially in the smaller hatchling and juvenile age classes. In addition, the habitat in which Sonoran desert tortoise population densities are the highest is complex, meaning it often contains many large boulders, somewhat dense vegetation, and challenging topographic relief. These factors can significantly hamper a surveyor's ability to detect them in the field (Zylstra *et al.* 2010, p. 1311).

Sampling Method Difficulty

Jaguars are difficult to detect due to their rarity, cryptic appearance, elusive behavior, and habitat complexity. Compounding the problem of low detection rates is that not all individuals can be detected using any one particular sampling method or even using multiple methods. Pollock *et al.* (2004, p. 43) present the example of the dugong (sea cow) off the coast of Australia. Using one method of detection—aerial surveys—some dugongs may be underwater and invisible to the observers searching for them from aircraft, or the observer may miss detecting them due to his or her uncertain perception process. Similarly, terrestrial salamanders in North Carolina and Tennessee most often occur below the surface of the ground, making detection particularly difficult, especially when using standard sampling protocols that only sample the surface population (Pollock *et al.* 2004, p. 53). Attempting to detect rare species by using multiple sampling methods or surveying multiple times can increase detections or increase confidence that non-detections are true absences; however, this is often prohibitively time-consuming and expensive and may not always be feasible because of the sensitivity of the species.

Jaguars, specifically, are secretive and nocturnal in nature (Seymour 1989, p. 2; 62 FR 39147, p. 39153; McCain and Childs 2008, p. 5) and, in the United States and northern Mexico, inhabit rugged, remote areas that are logistically difficult to survey. Even in studies designed to detect jaguars using both camera traps and track surveys in northern Mexico, neither method was completely effective in identifying individuals due to logistical problems related to rugged topography, hard soils, absence of roads, and harsh weather conditions (Rosas-Rosas and Bender 2012, pp. 95–96). In the United States specifically, most of the recent occurrences of jaguars (after 1996) would not have been known but for a substantial amount of time and effort being invested by the Borderlands Jaguar Detection Project (BJDP) (Johnson *et al.* 2011, p. 40). From 1997 to 2010, the BJDP maintained 45–50 remote-camera stations across three counties in Arizona, conducted track and scat (feces) surveys opportunistically, and followed up on credible sighting reports from other individuals, resulting in 105 jaguar locations representing two adult male jaguars and possibly a third of unknown sex (Johnson *et al.* 2011, p. 40). From the time the jaguar was listed in 1972 until 1997, no effort was made to detect jaguars in the United States, so we cannot be sure that a lack of detection indicates the species was absent.

Summary

Based on the above information, we determine that areas in which jaguars have been documented from 1962 to the present may have been occupied at the time of the original listing (March 30, 1972; 37 FR 6476) because: (1) Jaguars were rare on the landscape and distributed over large, rugged areas, meaning they were difficult to detect; (2) jaguars are cryptic and nocturnal by nature, making them difficult to detect; and (3) no survey effort was made to detect them in 1972, meaning we cannot be sure that a lack of detection indicates the species was absent. Therefore, based on the best available information related to jaguar rarity, biology, and survey effort, we determine that areas containing undisputed Class I records from 1962 to the present (September 11, 2013) may have been occupied by jaguars at the time of listing.

Occupancy Uncertainty

To the extent that uncertainty exists regarding our analysis of these data, we acknowledge there is an alternative explanation as to whether or not these areas were occupied at the time the jaguar was listed in 1972 (37 FR 6476). The lack of jaguar sightings at that time, as well as some expert opinions cited in our July 22, 1997, clarifying rule (62 FR 39147) (for example, Swank and Teer 1989), suggest that jaguars in the United States had declined to such an extent by that point as to be effectively eliminated. Therefore, an argument could be made that no areas in the United States were occupied by the species at the time it was listed, or that only areas containing undisputed Class I records from between 1962 and 1982 were occupied.

For this reason, we also analyzed whether or not these areas are essential to the conservation of the species. Through our analysis, we determine that they are essential to the conservation of the species for the following reasons: (1) They have demonstrated recent (since 1996) occupancy by jaguars; (2) they contain features that comprise jaguar habitat; and (3) they contribute to the species' persistence in the United States by allowing the normal demographic function and possible range expansion of the Northwestern Recovery Unit, which is essential to the conservation of the species (as discussed in the *Jaguar Recovery Planning in Relation to Critical Habitat* section, above).

Physical or Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the jaguar from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on August 20, 2012 (77 FR 50214), in the proposed revision of critical habitat published in the **Federal Register** on July 1, 2013 (78 FR 39237), and in the information presented below. Additional information can be found in the final clarifying rule published in the **Federal Register** on July 22, 1997 (62 FR 39147), the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, entire), the Digital Mapping in Support of Recovery Planning for the Northern Jaguar report (Sanderson and Fisher 2011, pp. 1–11), and the Jaguar Habitat Modeling and Update report (Sanderson and Fisher 2013, entire). We used the best scientific information available on habitat in the United States essential to the conservation of the jaguar as gathered by the Jaguar Recovery Team through the team's recovery planning effort. A complete list of information sources is available in our Literature Cited located on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0042 and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

To define the physical and biological features required for jaguar habitat in the United States, we reviewed available information and supporting data that pertains to the habitat requirements of the jaguar, focusing on studies conducted in Mexico as close to the U.S.-Mexico border as available. Many of these studies have been compiled and summarized by the Jaguar Recovery Team in the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, entire), the 2011 Digital Mapping in Support of Recovery Planning for the Northern Jaguar preliminary report (Sanderson and Fisher 2011, pp. 1–11) and the 2013 Jaguar Habitat Modeling and Update report (Sanderson and Fisher 2013, entire), which we regard as the best available scientific information for the jaguar and its habitat needs in the northern portion of its range. To define the physical and biological features and associated PCEs required for jaguar habitat in the United States, we relied primarily on information compiled in the Jaguar Habitat Modeling and Database Update report (Sanderson and Fisher 2013, entire). In two cases we substituted data layers for which more detailed, higher-resolution data were available for the United States (see ''Cover or Shelter'' and ''Habitats that are Protected from Disturbance or are Representative of the Historical, Geographical, and Ecological Distributions of a Species'' sections, below). For a complete list of data sources, see our response to comment number 63 in our Summary of

Comments and Recommendations section.

We have determined that the jaguar requires the following physical or biological feature as further described below: Expansive open spaces in the southwestern United States with adequate connectivity to Mexico that contain a sufficient native prey base and available surface water, have suitable vegetative cover and rugged topography to provide sites for resting, are below 2,000 m (6,562 feet (ft)), and have minimal human impact.

Space for Individual and Population Growth and for Normal Behavior

Expansive open spaces—Jaguars require a significant amount of space for individual and population growth and for normal behavior. Jaguars have relatively large home ranges and, according to Brown and López González (2001, p. 60), their home ranges are highly variable and depend on topography, available prey, and population dynamics. Home ranges need to provide reliable surface water, available prey, and sites in rugged terrain for resting that are removed from the impacts of human activity and influence (Jaguar Recovery Team 2012, pp. 15–16). The availability of these habitat characteristics can fluctuate within a year (dry versus wet seasons) and between years (drought years versus wet years).

Specific home ranges for jaguars depend on the sex of the individual, season, and vegetation type. The home ranges of borderland jaguars are presumably as large or larger than the home ranges of tropical jaguars (Brown and López González 2001, p. 60; McCain and Childs 2008, pp. 6–7), as jaguars in this area are at the northern limit of their range and the arid environment contains resources and environmental conditions that are more variable than those in the tropics (Hass 2002, as cited in McCain and Childs 2008, p. 6). Therefore, jaguars require more space in arid areas to obtain essential resources such as food, water, and cover (discussed below).

Only one limited home range study using standard radio-telemetry techniques and two home range studies using camera traps have been conducted for jaguars in northwestern Mexico. Telemetry data from one adult female tracked for 4 months during the dry season in Sonora indicated a home range size of 100 km² (38.6 mi²) (López González 2011, pers. comm.). Additionally, a male in Sonora was documented through camera traps using an average home range of 84 km² (32 mi²) (López González 2011, pers. comm.). No home range studies using standard radio-telemetry techniques have been conducted for jaguars in the southwestern United States, although McCain and Childs (2008, p. 5), using camera traps, reported one jaguar in southeastern Arizona as having a minimum observed ''range'' of 1,359 km² (525 mi²) encompassing two distinct mountain ranges. This study, however, was not designed to determine home range size. Therefore, we are relying on minimum home-range estimates for male and female jaguars from Sonora, Mexico (López González 2011, pers. comm.), as well as the expert opinion of the technical subgroup of the Jaguar Recovery Team, which came to the consensus that areas less than 100 km² (38.6 mi²) were too small to support a jaguar (Sanderson and Fisher 2013, p. 30) for the minimum amount of adequate habitat required by jaguars in the United States.

Therefore, based on the information above, we identify expansive open spaces in the United States of at least 100 km² (38.6 mi²) in size as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States.

Connectivity between expansive open spaces in the United States and Mexico—As discussed in the *Jaguar Recovery Planning in Relation to Critical Habitat* section, above, connectivity between the United States and Mexico is essential for the conservation of jaguars. Therefore, we identify connectivity between expansive open spaces in the United States and Mexico as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States.

Connectivity between expansive open spaces within the United States—We know that connectivity between expansive open areas of habitat for the jaguar in the United States is necessary if viable habitat for the jaguar is to be maintained. This is particularly true in the mountainous areas of Arizona and New Mexico, where isolated mountain ranges providing the physical and biological feature of jaguar habitat are separated by valley bottoms that may not possess the feature described in this final rule. However, we also know that, based on home range sizes and research and monitoring, jaguars will use valley bottoms (for example, McCain and Childs 2008, p. 7) and other areas of habitat connectivity to move among areas of higher quality habitat found in isolated mountain ranges. We acknowledge that jaguars use connective areas to move between mountain ranges in the United States; however, as they are mainly using them for passage, jaguars do not linger in these areas. As a result, there is only one occurrence record of a jaguar in these areas. With only one record, we are unable to describe the features of these areas because of a lack of information.

Therefore, while we acknowledge that habitat connectivity within the United States is important, the best available scientific and commercial information does not allow us to determine that any particular area within the valleys is essential, and all of the valley habitat is not essential to the conservation of the species. Therefore we are not designating any areas within the valleys between the montane habitat as critical habitat.

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

Food—Jaguar and large-cat experts believe that high-quality habitat for jaguars in the northwestern portion of their range should include a high abundance of native prey, particularly large prey like white-tailed deer and collared peccary (javelina), as well as an adequate number of medium-sized prey (Jaguar Recovery Team 2012, pp. 15–16). However, the Jaguar Recovery Team (2012, pp. 15–16) did not quantify ''high abundance'' or ''adequate number'' of each type of prey, making it difficult to state the density of prey required to sustain a resident jaguar in this portion of its range.

Jaguars usually catch and kill their prey by stalking or ambush and biting through the nape as do most Felidae (members of the cat family) (Seymour 1989, p. 5). Like other large cats, jaguars rely on a combination of cover, surprise, acceleration, and body weight to capture their prey (Schaller 1972 and Hopcraft *et al.* 2005, as cited by Cavalcanti 2008, p. 47). Jaguars are considered opportunistic feeders, and their diet varies according to prey density and ease of prey capture (sources as cited in Seymour 1989, p. 4). Jaguars equally use medium- and large-size prey, with a trend toward use of larger prey as distance increases from the equator (López González and Miller 2002, p. 218).

In northeastern Sonora, where the northernmost breeding population of jaguars occurs, Rosas-Rosas (2006, pp. 24–25) found that large prey greater than 10 kilograms (kg) (22 pounds (lb)) accounted for more than 80 percent of the total biomass consumed. Specifically, cattle accounted for more than half of the total biomass consumed (57 percent), followed by white-tailed

deer (23 percent), and collared peccary (5.12 percent). Medium-sized prey (1–10 kg; 2–22 lb), including lagomorphs (rabbit family) and coatis (*Nasua nasua*), accounted for less than 20 percent of biomass. Small prey, less than 1 kg (2 lb), were not found in scats (Rosas-Rosas 2006, p. 24). At the Chamela-Cuixmala Biosphere Reserve in Jalisco, Mexico (which is closed to livestock grazing), deer and javelina were the two most preferred prey species for jaguars, with jaguars consuming the equivalent of 85 deer per individual per year (Brown and López González 2001, p. 51). No estimates of the number of javelina consumed were provided, although in combination with deer, armadillo, and coati, these four prey items provided 98 percent of the biomass taken by jaguars (Brown and López González 2001, p. 50). Most jaguar experts believe that collared peccary and deer are mainstays in the diet of jaguars in the United States and Mexico borderlands (62 FR 39147), although other available prey, including coatis, skunk (*Mephitis* spp., *Spilogale gracilis*), raccoon (*Procyon lotor*), jackrabbit (*Lepus* spp.), domestic livestock, and horses are taken as well (Brown and López González 2001, p. 51; Hatten *et al.* 2005, p. 1024; Rosas-Rosas 2006, p. 24).

Therefore, based on the information above, we identify areas containing adequate numbers of native prey, including deer, javelina, and medium-sized prey items (such as coatis, skunks, raccoons, or jackrabbits) as an essential component of the physical and biological feature essential for the conservation of the jaguar in the United States.

Water—Several studies have demonstrated that jaguars require surface water within a reasonable distance year-round. This requirement likely stems from increased prey abundance at or near water sources (Cavalcanti 2008, p. 68; Rosas-Rosas *et al.* 2010, pp. 107–108), particularly in arid environments, although it is conceivable that jaguars require a nearby water source for drinking, as well. Seymour (1989, p. 4) found that jaguars are most commonly found in areas with a water supply, although the distance to this water supply is not defined. In northeastern Sonora, Mexico, Rosas-Rosas *et al.* (2010, p. 107) found that sites of jaguar cattle kills were positively associated with proximity to permanent water sources. They also found that these sites were positively associated with proximity to roads, but concluded that the effect of roads likely represented a response to major drainages, as roads generally followed major drainages within their study area.

In the United States, Hatten *et al.* (2005, p. 1026) analyzed distance to water as a feature of jaguar habitat using jaguar records from Arizona dating from 1900 to 2002, from which they selected the most reliable records (those with physical evidence or from a reliable witness) and most spatially accurate records (those with spatial errors of less than 8 km (5 mi)) to create a habitat suitability model. Of the 57 records they considered, 25 records were deemed reliable and accurate enough to include in the model. Using a digital GIS layer that included perennial and intermittent water sources (streams, rivers, lakes, and springs), Hatten *et al.* (2005, p. 1029) found that when perennial and intermittent water sources were combined, 100 percent of the 25 jaguar records used for their model were within 10 km (6.2 mi) of a water source. This distance from water (10 km; 6.2 mi) was then incorporated into a jaguar habitat modeling exercise in New Mexico (Menke and Hayes 2003, pp. 15–16), as well.

In the jaguar habitat models developed by Sanderson and Fisher (2011, pp. 10–11; 2013, pp. 33–34) for the proposed Northwestern Recovery Unit, 10 km (6.2 mi) was also determined to be the maximum distance from water that could still provide jaguar habitat. In addition, this distance was further acknowledged by the technical subgroup of the Jaguar Recovery Team as the maximum distance an area could be from a year-round water source to constitute high-quality jaguar habitat (Jaguar Recovery Team 2012, pp. 15–16).

Therefore, based on the information above, we identify sources of surface water within at least 20 km (12.4 mi) of each other such that a jaguar would be within 10 km (6.2 mi) of a water source at any given time (i.e., if it were halfway between these water sources) as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States.

Cover or Shelter

Vegetative Cover—Jaguars require vegetative cover allowing them to stalk and ambush prey, as well as providing areas in which to den and rest (Jaguar Recovery Team 2012, pp. 15–16). Jaguars are known from a variety of vegetation communities (Seymour 1989, p. 2), sometimes called biotic communities or vegetation biomes (Brown 1994, p. 9). Jaguars have been documented in arid areas in northwestern Mexico and the southwestern United States, including thornscrub, desertscrub, lowland desert, mesquite grassland, Madrean oak woodland, and pine-oak woodland communities (Brown and López González 2001, pp. 43–50; Boydston and López González 2005, p. 54; McCain and Childs 2008, p. 7; Rosas-Rosas *et al.* 2010, p. 103). As most of the information pertaining to jaguar habitat in the U.S.-Mexico borderlands relies on descriptions of biotic communities from Brown and Lowe (1980, map) and Brown (1994, entire, including appendices), for purposes of this document we are using these same sources and descriptions, as well.

According to Brown and López González (2001, p. 46), the most important biotic community for jaguars in the southwestern borderlands (Arizona, New Mexico, Sonora, Chihuahua) is Sinaloan thornscrub (as described in Brown 1994, pp. 100–105), with 80 percent of the jaguars killed in the state of Sonora documented in this vegetation biome (Brown and López González 2001, p. 48). This biotic community, however, is absent in the United States (Brown and Lowe 1980, map; Brown and López González 2001, p. 49). Madrean evergreen woodland is also important for borderlands jaguars; nearly 30 percent of jaguars killed in the borderlands region were documented in this biotic community (Brown and López González 2001, p. 45). Brown and López González (2000, p. 538) indicate jaguars in Arizona and New Mexico predominantly use montane environments, probably because of more amiable temperatures and prey availability. A smaller, but still notable, number of jaguars were killed in chaparral and shrub-invaded semidesert grasslands (Brown and López González 2001, p. 48). In Arizona, approximately 15 percent of the jaguars taken within the State between the years 1900 and 2000 were in semidesert grasslands (Brown and López González 2001, p. 49).

The more recent sightings (2001–2007), as described in McCain and Childs (2008, pp. 3, 7), document jaguars in these same biotic communities (note that the Madrean evergreen woodland and semidesert grassland biotic communities encompass mesquite grassland, Madrean oak woodland, and pine-oak woodland habitats), and the most recent sightings of a jaguar in Arizona (2011–2013) were in Madrean evergreen woodland, as well (see Table 1 in the ''Class I Records'' section, above).

Several modeling studies incorporating vegetation characteristics have attempted to refine the general

understanding of habitats that have been or might be used by jaguars in the United States. To characterize vegetation biomes, Hatten *et al.* (2005, entire) used a digital vegetation layer based on Brown and Lowe (1980, map) and Brown (1994, entire). They found that 100 percent of the 25 jaguar records used for their model were observed in four vegetation biomes, including: (1) Scrub grasslands of southeastern Arizona (56 percent); (2) Madrean evergreen forest (20 percent); (3) Rocky Mountain montane conifer forest (12 percent); and (4) Great Basin conifer woodland (12 percent).

In addition, two studies (Menke and Hayes 2003, entire; Robinson *et al.* 2006, entire) attempted to evaluate potential jaguar habitat in New Mexico using methods similar to those described in Hatten *et al.* (2005, pp. 1025–1028). However, due to the small number of reliable and spatially accurate records within New Mexico, neither model was able to determine patterns of habitat use (and associated vegetation communities) for jaguars in New Mexico, instead relying on literature and expert opinion for elements to include in the models. These vegetation communities included Madrean evergreen woodland, which Menke and Hayes (2003, p. 13) considered the most similar to habitats used by the closest breeding populations of jaguars in Mexico, as well as grasslands (semidesert, Plains and Great Basin, and subalpine), interior chaparral, conifer forests and woodlands (Great Basin, Petran montane, and Petran subalpine), and desertscrub (Chihuahuan, Arizona upland Sonoran, and Great Basin).

Using the methodology described in Hatten *et al.* (2005, pp. 1025–1028), but with some modifications, Sanderson and Fisher (2011, pp. 1–11; and 2013, entire) created jaguar habitat models for the proposed Northwestern Recovery Unit. In the latest version of the model (version 13), Sanderson and Fisher (2013, p. 13) used a data set of 453 jaguar observations (note that Table 1.3 incorrectly states 452 instead of 453) for which the description of the location was sufficient to place it with certainty within 10 km (6.2 mi) of its actual location, and for which a date to the nearest century was available (Sanderson and Fisher 2013, pp. 3–5 and Appendix 2). Sanderson and Fisher (2013, p. 6) substituted a digital layer describing ecoregions (World Wildlife Fund Ecoregions) for the digital biotic community layer based on Brown and Lowe (1980, map) and Brown (1994, entire), however. The reason for this was because the latter two references do not cover the entire Northwestern Recovery Unit for the jaguar; therefore, an appropriate substitution was required for modeling purposes. Within this ecoregion's digital layer, the category given the highest relative weight (0.2) within the United States is called Sierra Madre Occidental pine-oak forests, representing the best jaguar habitat within the borderlands region (Sanderson and Fisher 2013, p. 34). This category most closely resembles the Madrean evergreen woodland biotic community. There is no equivalent category for semidesert grassland in the ecoregions digital layer; instead, Sonoran desert and Chihuahuan desert cover all grassland and desert biotic communities. These two desert categories are given a very low relative weight (0.01), representing poorer quality jaguar habitat within the borderlands region (Sanderson and Fisher 2013, p. 34).

Sanderson and Fisher (2011, p. 7; 2013, pp. 5–6) also added a digital layer to capture canopy cover (called land cover in the reports), as represented by a digital layer called tree cover. In the latest version of the model (version 13), Sanderson and Fisher (2013, p. 20) analyzed the tree cover preferred by jaguars in the Jalisco Core Area (the southernmost part of the Northwestern Recovery Unit) separately from tree cover in all other areas (note that p. 15 of this report incorrectly states that the Sinaloa Secondary Area is included with the Jalisco Core Area in this analysis) to reflect the major habitat shift from the dry tropical forest of Jalisco, Mexico, to the thornscrub vegetation of Sonora, Mexico. The results of these analyses indicate that jaguars in the southernmost part of the Northwestern Recovery Unit (the Jalisco Core Area) seem to inhabit a wider range of tree cover values (greater than 1 to 100 percent), whereas jaguars throughout the rest of the Northwestern Recovery Unit (including the United States) appear to inhabit a narrower range of tree cover values (greater than 1 to 50 percent) (Sanderson and Fisher, p. 20).

Therefore, based on the information above, we identify Madrean evergreen woodlands and semidesert grasslands containing greater than 1 to 50 percent tree cover (or canopy cover) as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States. Though slightly different than the habitat characteristics included in the latest habitat model produced by the Jaguar Recovery Team, Madrean evergreen woodland and semidesert grassland as described by Brown and Lowe (1980, map) and Brown (1994, entire, including appendices) are included instead of Sierra Madre Occidental pine-oak, Sonoran desert, and Chihuahuan desert vegetation communities described by the World Wildlife Fund Ecoregion data layer because of the higher resolution of these data and more accurate representation of the vegetation communities in the United States and borderlands region and their importance to jaguars within this area (as described above; see also Table 1 in the ''Class I Reports'' section, above). We directly incorporate the tree cover recommendation within the northern part of the Northwestern Recovery Unit (greater than 1 to 50 percent; Sanderson and Fisher 2013, p. 33) as part of this essential physical or biological feature component.

Rugged Topography—Rugged topography (including canyons, ridges, and some rocky hills to provide sites for resting) is acknowledged as an important component of jaguar habitat in the northwestern-most portion of its range (Jaguar Recovery Team 2012, pp. 15–16). The most recent Sanderson and Fisher (2013, p. 17) habitat model for the Northwestern Recovery Unit for the jaguar determined that jaguars in this area were most frequently found in intermediately, moderately, and highly rugged terrain. Additionally, one study in the U.S.-Mexico borderlands area (Boydston and López González 2005, entire) and one in northeastern Mexico (Ortega-Huerta and Medley 1999, entire) incorporate slope as a factor in describing jaguar habitat. Although slope can provide some understanding of topography (steep slopes generally indicate a more rugged landscape), it is less descriptive in terms of quantifying terrain heterogeneity (diversity) (Hatten *et al.* 2005, pp. 1026–1027). Nonetheless, in these studies, jaguar distribution was found to be on steeper slopes than those slopes that were available for the study areas in general (Ortega-Huerta and Medley 1999, p. 261; Boydston and López González 2005, p. 54), indicating jaguars were found in more rugged areas in these studies.

Two modeling exercises incorporating ruggedness have been conducted to determine existing jaguar habitat in the southwestern United States, one in Arizona and another in New Mexico. To examine the relationship between jaguars and landscape roughness in Arizona, Hatten *et al.* (2005, p. 1026) calculated a terrain ruggedness index (TRI; Riley *et al.* 1999, as cited in Hatten *et al.* 2005, p. 1026) measuring the slope in all directions of each 1-km^2 (0.4-mi^2) cell (pixel) in their model. They divided the TRI data into seven classes

according to relative roughness: level, nearly level, slightly rugged, intermediately rugged, moderately rugged, highly rugged, and extremely rugged. With respect to topography, they found that 92 percent of the 25 jaguar records used in their model (see ''*Water''* in the ''Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements'' section, above) occurred in intermediately rugged to extremely rugged terrain (the remaining 8 percent were in nearly level terrain).

Menke and Hayes (2003, entire) attempted to evaluate potential jaguar habitat in New Mexico using methods similar to those described in Hatten *et al.* (2005, pp. 1025–1028). While patterns of habitat use for jaguars could not be determined (due to the small number of reliable and spatially accurate records within New Mexico, of which there were seven), all sighting locations occurred in areas that were assigned a highly rugged value, and terrain ruggedness was the single variable that appeared to have a high degree of correlation with locations of jaguar observations in New Mexico.

In addition, through the most recent habitat modeling efforts for the jaguar in the Northwestern Recovery Unit, Sanderson and Fisher (2013, pp. 33–34) determined that intermediately, moderately, or highly rugged terrain represented the best habitat available for jaguars in the northwestern-most part of their range.

Therefore, based on this information, we identify areas of intermediately, moderately, or highly rugged terrain as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States.

Elevation—Elevation is a component of jaguar habitat in the northwestern-most portion of its range (Sanderson and Fisher 2013, pp. 5, 6, Appendix 2). Based on a visual analysis of the frequency of jaguar observations at different elevations within the northwestern-most portion of the species' range, the technical subgroup of the Jaguar Recovery Team determined that areas above 2,000 m (6,562 ft) did not provide jaguar habitat, as only 3.3 percent (15 of 453) of the observations utilized in the most recent jaguar habitat modeling effort occurred above this elevation (Sanderson and Fisher 2013, pp. 19, 29; note that p. 19 incorrectly states 20 observations above 2,000 m (6,562 ft) instead of 15, and Table 1.3 on p. 13 incorrectly states 452 jaguar observations total instead of 453). In the most recent habitat model for the jaguar in the proposed Northwestern Recovery Unit, Sanderson and Fisher (2013, pp. 19, 29) incorporated this upper-elevation limit and excluded areas above 2,000 m (6,562 ft). Therefore, based on this information, we identify areas of less than 2,000 m (6,562 ft) in elevation as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States.

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

As demonstrated in Table 1, above, from 1962 to the present all undisputed Class I jaguar observations for which the sex of the animal could be determined have been male individuals. Few records of females exist within the United States (see Brown and López González 2001, pp. 6–9 for records from 1900–2000), and even fewer records of jaguar breeding events in the United States have been documented. The most recent known breeding event is from over 100 years ago in 1910 of a female jaguar with one cub at the head of Chevlon Canyon in the Sitgreaves National Forest in Arizona (Brown and López González 2001, p. 9). Further, as described in the *Jaguar Recovery Planning in Relation to Critical Habitat* section, above, the recovery function and value of critical habitat within the United States is to contribute to the species' persistence and, therefore, overall conservation by providing areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit (Jaguar Recovery Team 2012, pp. 40, 42). Since the last known breeding event in the United States was in 1910, the breeding habitat for jaguars in the United States is not clearly understood. Further, while some assessment of breeding habitat has been conducted in Mexico, this habitat is different than the habitat in the United States. Therefore we are not able to identify any additional habitat features needed for purposes of reproduction, beyond those habitat features already identified.

Habitats That Are Protected From Disturbance or Are Representative of the Historical, Geographical, and Ecological Distributions of a Species

Human populations can impact jaguars directly by killing individuals through hunting, poaching, or depredation control, as well as indirectly through disturbance of normal biological activities, loss of habitat, and habitat fragmentation. Rangewide, illegal killing of jaguars is one of the two most significant threats to the jaguar (Nowell and Jackson 1996, p. 121; Núñez *et al.* 2002, p. 100; Taber *et al.* 2002, p. 630; Chávez and Ceballos 2006, p. 10), and, according to the July 22, 1997, clarifying rule (62 FR 39147), the primary threat to jaguars in the United States was illegal shooting (see listing rule for a detailed discussion). This, however, is no longer accurate, as the most recent known shooting of a jaguar in Arizona was in 1986 (Brown and López González 2001, p. 7). Jaguars are protected by Federal law through the Act and by State law in Arizona and New Mexico. Four of the individual jaguars most recently documented (since 1996) in Arizona and New Mexico have been documented by lion hunters, who took photographs of the jaguars and then reported them to the Arizona Game and Fish Department and the Service. While illegal killing of jaguars continues to be a major threat to jaguars south of the U.S.-Mexico international border, it does not appear to be a significant threat within the United States.

In terms of human influence and impact on jaguars other than by direct killing, human populations have both direct and indirect impacts on jaguar survival and mortality. For example, an increase in road density and human settlements tends to fragment habitat and isolate populations of jaguars and other wildlife. For carnivores in general, the impacts of high road density have been well documented and thoroughly reviewed (Noss *et al.* 1996 and Carroll *et al.* 2001, as cited by Menke and Hayes 2003, p. 12). Roads may have direct impacts to carnivores and carnivore habitats, including roadkill, disturbance, habitat fragmentation, changes in prey numbers or distribution, and increased access for legal or illegal harvest (Menke and Hayes 2003, p. 12; Colchero *et al.* 2010, entire). Studies have also shown that jaguars selectively use large areas of relatively intact habitat away from certain forms of human influence. Zarza *et al.* (2007, pp. 107, 108) report that towns and roads had an impact on the spatial distribution of jaguars in the Yucatan peninsula, where jaguars used areas located more than 6.5 km (4 mi) from human settlements and 4.5 km (2.8 mi) from roads. In the State of Mexico, Mexico, Monroy-Vilchis *et al.* (2008, p. 535) report that one male jaguar occurred with greater frequency in areas relatively distant from roads and human populations. In some areas of western Mexico, however, jaguars (both sexes)

have frequently been recorded near human settlements and roads (Núñez 2011, pers. comm.). In Marismas Nacionales, Nayarit, a jaguar den was recently located very close to an agricultural field, apparently 1 km (0.6 mi) from a small town (Núñez 2011, pers. comm.). Jaguar presence is affected in different ways by various human activities; however, direct persecution likely has the most significant impact.

Because jaguars are secretive animals and generally tend to avoid highly disturbed areas (Quigley and Crawshaw 1992, entire; Hatten *et al.* 2005, p. 1025), human density was a factor considered in jaguar habitat modeling exercises for Arizona (Hatten *et al.* 2005, p. 1025) and New Mexico (Menke and Hayes 2003, pp. 9–13; Robinson *et al.* 2006, pp. 10, 15, 18–20), and the habitat models developed by Sanderson and Fisher (2011, pp. 5–11 and 2013, entire) for the northwestern Mexico and the U.S.-Mexico borderlands area. Hatten *et al.* (2005, p. 1025) excluded areas within city boundaries, higher density rural areas visible on satellite imagery, and agricultural areas from their Arizona habitat model, as recommended by jaguar experts. All of the jaguar locations used in their model fell outside of these areas, indicating jaguars are not found in highly developed or disturbed areas (Figure 6, p. 1031).

Menke and Hayes (2003, pp. 9–13) attempted to evaluate potential jaguar habitat in New Mexico using methods similar to those described in Hatten *et al.* (2005, p. 1025). Because of a lack of comparable digital data for New Mexico, they instead created a data layer of road density per km^2 and classified it into habitat suitability categories. However, due to the small number of reliable and spatially accurate jaguar occurrence records within New Mexico (a total of seven), patterns of habitat use for jaguars could not be determined from their model, and they did not summarize the road density categories in which jaguars were found within the State. In the habitat model for New Mexico developed by Robinson *et al.* (2006), areas with continuous row crop agriculture, human residential development in excess of 1 house per 4 ha (10 ac), or industrial areas were not considered jaguar habitat, and were therefore excluded from their model. Similarly to Menke and Hayes (2003, entire), patterns of habitat use for jaguars could not be determined from their model, and they did not summarize the human footprint categories in which jaguars were found within the State.

The habitat models developed by Sanderson and Fisher (2011, pp. 5–11 and 2013, pp. 33–42) include a Human Influence Index (HII) criterion developed by the Wildlife Conservation Society (WCS) and Center for International Earth Science Information Network (CIESIN) at the Socioeconomic Data and Applications Center (SEDAC) at Columbia University (SEDAC 2012, p. 1). Using procedures developed by Sanderson (2002, as described in SEDAC 2012, pp. 1–2), WCS and CIESIN combined scores for eight input layers (human population density per km^2, railroads, major roads, navigable rivers, coastlines, stable nighttime lighting, urban polygons, and land cover) to calculate a composite HII for 1-km^2 (0.4-mi^2) grid cells (pixels) worldwide. These values could range from 0 to 64, with 0 representing no human influence and 64 representing the maximum human influence possible using all 8 measures of human presence.

In the most recent version of the habitat model (version 13), Sanderson and Fisher (2013, pp. 20, 34) analyzed the HII preferred by jaguars in the Jalisco Core Area (the southernmost part of the Northwestern Recovery Unit) separately from the HII in all other areas (note that p. 15 of this report incorrectly states that the Sinaloa Secondary Area is included with the Jalisco Core Area in this analysis) to recognize that jaguars may respond more tolerantly to human influence in the south than they do in the north. The results of these analyses indicate that jaguars in the southernmost part of the Northwestern Recovery Unit (the Jalisco Core Area) seem to inhabit a wider range of HII values (less than 30), whereas jaguars throughout the rest of the Northwestern Recovery Unit (including the United States) appear to inhabit a narrower range of HII values (less than 20) (Sanderson and Fisher 2013, pp. 20, 34).

Therefore, based on this information, we identify areas in which the HII calculated over 1 km^2 (0.4 mi^2) is less than 20 as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States. These areas are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-km^2 (0.4-mi^2) area.

Primary Constituent Elements for Jaguar

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of jaguar in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to jaguars are:

Expansive open spaces in the southwestern United States of at least 100 km^2 (38.6 mi^2) in size which:

(1) Provide connectivity to Mexico;

(2) Contain adequate levels of native prey species, including deer and javelina, as well as medium-sized prey such as coatis, skunks, raccoons, or jackrabbits;

(3) Include surface water sources available within 20 km (12.4 mi) of each other;

(4) Contain from greater than 1 to 50 percent canopy cover within Madrean evergreen woodland, generally recognized by a mixture of oak (*Quercus* spp.), juniper (*Juniperus* spp.), and pine (*Pinus* spp.) trees on the landscape, or semidesert grassland vegetation communities, usually characterized by *Pleuraphis mutica* (tobosagrass) or *Bouteloua eriopoda* (black grama) along with other grasses;

(5) Are characterized by intermediately, moderately, or highly rugged terrain;

(6) Are below 2,000 m (6,562 feet) in elevation; and

(7) Are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-km^2 (0.4-mi^2) area.

Because habitat in the United States is at the edge of the species' northern range, and is marginal compared to known habitat throughout the range, we have determined that all of the primary constituent elements discussed must be present in each specific area to constitute critical jaguar habitat in the United States, including connectivity to Mexico (but that connectivity may be provided either through a direct connection to the border or by other areas essential for the conservation of the species; see *Areas Essential for the Conservation of Jaguars,* below).

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection.

Jaguar habitat and the features essential to their conservation are threatened by the direct and indirect effects of increasing human influence into remote, rugged areas, as well as projects and activities that sever connectivity to Mexico. These may include, but are not limited to: Significant increases in border-related activities, both legal and illegal; construction of roadways, power lines, or pipelines; construction or expansion of human developments; mineral extraction and mining operations; military activities in remote locations; and human disturbance related to increased activities in or access to remote areas.

Jaguars in the United States are understood to be individuals dispersing north from Mexico (perhaps in some cases becoming resident in the United States), where the closest breeding population occurs about 210 km (130 mi) south of the U.S.-Mexico border in Sonora near the towns of Huasabas, Sahuaripa (Brown and López González 2001, pp. 108–109), and Nacori Chico (Rosas-Rosas and Bender 2012, pp. 88–89). Therefore, impeding jaguar movement from Mexico to the United States would adversely affect the Northwestern Recovery Unit's ability to cyclically expand and contract as jaguar populations in that unit recover.

Continuing threats from construction of border infrastructure (such as pedestrian fences and roads), as well as illegal activities and resultant law enforcement response (such as increased human presence, vehicles, and lighting), may limit movement of jaguars at the U.S.-Mexico border (Service 2007, pp. 23–27; 2008, pp. 73–75). The border from the Tohono O'odham Nation, Arizona, to southwestern New Mexico has a mix of pedestrian fence (not permeable to jaguars), vehicle fence (fence designed to prevent vehicle but not pedestrian entry; it is generally permeable enough to allow for the passage of jaguars), legacy (older) pedestrian and vehicle fence, and unfenced segments (primarily in rugged, mountainous areas). Fences designed to prevent the passage of humans across the border also prevent passage of jaguars. However, there is little to no impermeable fence in areas designated as critical habitat, and we do not anticipate the construction of impermeable fence in such areas. Additionally, fences may cause an increase in illegal traffic and subsequent law enforcement activities in areas where no fence exists (such as rugged, mountainous areas). This activity may limit jaguar movement across the border and result in general disturbance to jaguars and degradation of their habitat.

While current levels of law enforcement activity do not pose a significant threat, a substantial increase in activity levels could be of concern. We note that some level of law enforcement activity can be beneficial, as it decreases illegal traffic. Significant increases in illegal crossborder activities in the designated critical habitat areas could pose a threat to the jaguar, and, therefore, border security actions provide a beneficial decrease in crossborder violations and their impacts. In summary, special management considerations or protection of the physical or biological feature essential to the conservation of jaguar habitat may be needed to alleviate the effects of border-related activities, allowing for some level of permeability so that jaguars may pass through the U.S.-Mexico border.

Under section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act, the Secretary of the Department of Homeland Security (DHS) is authorized to waive laws where the Secretary of DHS deems it necessary to ensure the expeditious construction of border infrastructure in areas of high illegal entry. As noted above, we know of no plans to construct additional security fences in the designated critical habitat. However, if future national security issues require additional measures and the Secretary of DHS invokes the waiver, review through the section 7 consultation process would not be conducted. If DHS chooses to consult with the Service on activities covered by a waiver, special management considerations would continue to occur on a voluntary basis.

Construction of roadways, power lines, or pipelines (all of which usually include maintenance roads), construction or expansion of human developments, mineral extraction and mining operations, and military operations on the ground can have the effect of altering habitat characteristics and increasing human presence in otherwise remote locations. Activities that can permanently alter vegetation characteristics, displace native wildlife, affect sources of water, and/or alter terrain ruggedness, such as construction and mining, may render an area unsuitable for jaguars. In addition, these activities, as well as military operations on the ground in remote areas, bring an increase in human disturbance into jaguar habitat, potentially fragmenting it further. As described in the ''Habitats Protected from Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species'' section, above, studies have also shown that jaguars selectively use large areas of relatively intact habitat away from human influence (Zarza *et al.* 2007, pp. 107, 108). Modeling exercises both in the United States (Menke and Hayes 2003, entire; Hatten *et al.* 2005, entire; Robinson *et al.* 2006, entire) and in northwestern Mexico and the U.S.-Mexico borderlands area (Sanderson and Fisher 2011, pp. 1–11 and 2013, entire) incorporate low levels of human influence when mapping potential jaguar habitat in the United States. Special management considerations of the physical and biological feature essential to the conservation of the jaguar may be needed to alleviate the effects on jaguar habitat of new road construction or construction or expansion of power line and pipeline projects; human developments; mining operations; and ground-based military activities. Future projects should avoid (to the maximum extent possible) areas identified as meeting the definition of critical habitat for jaguars, and if unavoidable, should be constructed or carried out to minimize habitat effects.

Areas Essential for the Conservation of Jaguars

As described in the ''Occupied Area at the Time of Listing'' section, above, we acknowledge that the lack of jaguar sightings at the time the species was listed as endangered in 1972 (37 FR 6476), as well as some expert opinions cited in our July 22, 1997, clarifying rule (62 FR 39147) (for example, Swank and Teer 1989), suggest that jaguars in the United States had declined to such an extent by that point as to be effectively eliminated. Only two undisputed Class I records (Table 1 in the ''Class I Records,'' above) exist for jaguars between 1962 and 1982, both of which were males killed by hunters. To the extent that areas described above may not have been occupied at the time of listing, we determine that they are essential to the conservation of the species for the following reasons: (1) They have demonstrated recent (since 1996) occupancy by jaguars; (2) they contain features that comprise suitable jaguar habitat; and (3) they contribute to the species' persistence in the United States by allowing the normal demographic function and possible range expansion of the proposed Northwestern Recovery Unit, which is essential to the conservation of the species (as discussed in the *Jaguar Recovery Planning in Relation to Critical Habitat* section, above). Therefore, we include them in the critical habitat designation.

Additionally, as discussed in the *Jaguar Recovery Planning in Relation to Critical Habitat* and ''Space for Individual and Population Growth and for Normal Behavior'' sections, above, connectivity to Mexico is essential for the conservation of jaguars. Jaguars in the United States are understood to be individuals dispersing from the nearest core population in Mexico, which includes areas in central Sonora, southwestern Chihuahua, and northeastern Sinaloa (Jaguar Recovery Team 2012, p. 21). The closest known breeding population occurs about 210 km (130 mi) south of the U.S.-Mexico border in Sonora near the towns of Huasabas, Sahuaripa (Brown and López González 2001, pp. 108–109), and Nacori Chico (Rosas-Rosas and Bender 2012, pp. 88–89). In several of our **Federal Register** documents pertaining to the jaguar, including the notice in which we determined that designating critical habitat was prudent (75 FR 1741, p. 1743), we discussed the need to develop and maintain travel corridors for jaguars between the United States and Mexico to enable a few, possibly resident individuals to persist north of the international border. Therefore, we conclude that maintaining travel corridors to Mexico is essential for the conservation of jaguars in the Northwestern Recovery Unit, and, therefore, for the species as a whole.

As we discussed under ''Space for Individual and Population Growth and for Normal Behavior,'' above, describing these areas of connectivity within the United States is difficult because of a lack of information about the features these areas encompass. However, in some areas there may be a level of connectivity to Mexico that could be provided because these areas contain some, but not all, of the PCEs described above. In the 2011 jaguar habitat model developed for northwestern Mexico and the U.S.-Mexico borderlands area, Sanderson and Fisher (2011, p. 11) described how low human influence is perhaps the most important feature defining jaguar habitat, as jaguars most often avoid areas with too much human pressure. Furthermore, their model described a level of uncertainty regarding jaguar use of areas with moderate tree cover and intermediate to high ruggedness, as jaguars could potentially be found in areas meeting only one of these habitat qualities. Therefore, we have determined the most likely areas providing connectivity from occupied areas in the United States to Mexico are those in which the human influence is low, and either or both moderate tree cover or intermediately to highly rugged terrain is present.

Consequently, we are further defining areas essential for the conservation of jaguars as those areas without a Class I observation that: (1) Connect an area that may have been occupied that is isolated within the United States to Mexico, either through a direct connection to the international border or through another area that may have been occupied; and (2) contain low human influence and impact, and either vegetative cover or rugged terrain. Based on these criteria, we identified three subunits outside of areas that may have been occupied that are also essential for the conservation of jaguars in the United States because they provide connectivity to Mexico. They include the southern extent of the Baboquivari Mountains, an east-west connection area between the Santa Rita and Empire Mountains and northwestern extent of the Whetstone Mountains, and a north-south connection area between the southern extent of the Whetstone Mountains and the Huachuca Mountains (including the Mustang Mountains).

Climate Change

The degree to which climate change will affect jaguar habitat in the United States is uncertain, but it has the potential to adversely affect the jaguar within the next 50 to 100 years (Jaguar Recovery Team 2012, p. 32). Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah and Lovejoy 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015).

The current prognosis for climate change impacts in the American Southwest includes fewer frost days; warmer temperatures; greater water demand by plants, animals, and people; and an increased frequency of extreme weather events, such as heat waves, droughts, and floods (Weiss and Overpeck 2005, p. 2074; Archer and Predick 2008, p. 24). How climate change will affect summer precipitation is less certain, because precipitation predictions are based on continental-scale general circulation models that do not yet account for land use and land cover effects or regional phenomena, such as those that control monsoonal rainfall in the Southwest (Weiss and Overpeck 2005, p. 2075; Archer and Predick 2008, pp. 23–24). Some models predict dramatic changes in Southwestern vegetation communities as a result of climate change (Weiss and Overpeck 2005, p. 2074; Archer and Predick 2008, p. 24), especially as wildfires carried by nonnative plants (e.g., buffelgrass) potentially become more frequent, promoting the presence of exotic species over native ones (Weiss and Overpeck 2005, p. 2075).

The impact of future drought, which may be long-term and severe (Seager *et al.* 2007, pp. 1183–1184; Archer and Predick 2008, entire), may affect jaguar habitat in the U.S.-Mexico borderlands area, but the information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. We do not know whether the changes that have already occurred have affected jaguar populations or distribution, nor can we predict how the species will adapt to or be affected by the type and degree of climate changes forecast. We are not currently aware of any climate change information specific to the habitat of the jaguar that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the final critical habitat designation for this species specifically to address the effects of climate change.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We reviewed available information and supporting data that pertains to the habitat requirements of the jaguar. Much of this information is compiled in the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, entire), Digital Mapping in Support of Recovery Planning for the Northern Jaguar report (Sanderson and Fisher 2011, pp. 1–11), and Jaguar Habitat Modeling and Database Update report (Sanderson and Fisher 2013, entire), which we regard as

the best available information for the jaguar and its habitat needs in the northern portion of its range. A complete list of information sources is available in our Literature Cited located on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0042 and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If, after identifying occupied areas, a determination is made that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e), we then consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species. We are designating critical habitat in areas within the geographical area occupied by the species at the time of listing in 1972. While we understand there may be alternative explanations as to whether or not areas were occupied at the time the jaguar was listed, we are required to make an administrative decision regarding occupancy status for purposes of delineating critical habitat units and applying the policy as described in the Act. Based on our analyses as discussed under the *Areas Essential for the Conservation of Jaguars,* above, it is our determination that the lands described were occupied at the time of listing, and thus are described in the unit descriptions, below, as being occupied. However, these same areas are also considered essential, based on our analysis, above. We also are designating specific areas without a Class I observation outside the geographical area that may have been occupied by the species at the time of listing. These subunits provide connectivity between subunits that may have been occupied and Mexico because we have determined that such areas are essential for the conservation of the species.

As discussed above, we are defining the areas that may be occupied by jaguars to include rugged mountain ranges in southeastern Arizona and extreme southwestern New Mexico: (1) In which an undisputed Class I record has been documented (see Table 1 in the ''Class I Records'' section, above) between 1962 and the present (September 11, 2013), and (2) that currently contain the physical or biological feature described above (see below for the steps we followed to delineate critical habitat boundaries). Therefore, occupied areas may include the Baboquivari, Quinlan, Coyote, Pajarito, Atascosa, Tumacacori, Patagonia, Canelo Hills, Huachuca, Grosvenor Hills, Santa Rita, Empire, Whetstone, and Peloncillo Mountains of Arizona, and the Peloncillo and San Luis Mountains of New Mexico.

All undisputed Class I records of jaguars documented in the United States since 1962 have been within the aforementioned mountain ranges, with the following two exceptions. We are not including the Dos Cabezas Mountains in Arizona (one male jaguar killed in 1986) as critical habitat because, while this mountain range contains some of the primary constituent elements of the physical or biological feature required for critical habitat, by itself it is not of an adequate size (100 km^2 (38.6 mi^2)) to meet the expansive open spaces requirement. Additionally, the 1971 record of a male jaguar killed by hunters was along the Santa Cruz River, not within a mountain range. As described above under ''Space for Individual and Population Growth and for Normal Behavior,'' this is the only record found in a valley bottom since the species was listed, and likely represents a jaguar moving between areas of higher quality habitat found in the surrounding isolated mountain ranges. Therefore, because we are unable to describe or delineate the features of areas connecting mountain ranges in the United States due to a lack of information, this record does not fall within or near the physical or biological feature described above.

We are also designating specific areas without a Class I observation outside the geographical area that may have been occupied by the species at the time of listing. These areas provide connectivity to Mexico, or to another area that may have been occupied that provides connectivity to Mexico (see *Areas Essential for the Conservation of Jaguars,* above), because such areas are essential for the conservation of the species.

We delineated (mapped) critical habitat boundaries using the following steps:

(1) We mapped areas containing PCEs 3, 4, 5, and 7 as determined from GIS data on water availability, vegetation community, tree cover, ruggedness, and human influence (for a list of data sources, see our response to comment 63 in the **Summary of Comments and Recommendations** section). We did not use data describing distribution of native prey to map areas because comprehensive, consistent data regarding prey distribution across Arizona and New Mexico is lacking. Therefore, we relied on the best information that is readily available from the Arizona Game and Fish Department (Hunt Arizona 2012 Edition, available at: *http://www.azgfd.gov/regs/HuntArizona2012.pdf*) and the New Mexico Department of Game and Fish (Harvest Information, available at: *http://www.wildlife.state.nm.us/recreation/hunting/*).

Using this information, we determined that white-tailed deer and javelina (the preferred prey of the jaguar in the northwesternmost part of its range) have been present in each critical habitat unit (described in Final Critical Habitat Designation, below) in Arizona for at least 50 years, and have been successfully hunted in each hunt unit overlapping jaguar critical habitat for the same period of time (Game Management Units 30A, 34A, 34B, 35A, 35B, 36A, 36B, and 36C). Historical harvest information from New Mexico is not as readily available; however, based on the most recent harvest information, white-tailed deer and javelina are available in Unit 5 of jaguar critical habitat (Game Management Unit 27), and are likely available in Unit 6 (both described in Final Critical Habitat Designation, below) of jaguar critical habitat (Game Management Unit 26; we can determine that javelina have been successfully harvested in this Game Management Unit, but this particular unit lumps all deer together, so we are unable to distinguish hunt success between mule deer and white-tailed deer). Therefore, while we were unable to map prey distribution within Arizona and New Mexico, we believe adequate levels of prey are available, and have been available for at least 50 years in Arizona.

Areas (also called polygons) that were adjacent to each other (for example, touching at corners) were merged into one polygon. We then selected polygons containing at least one undisputed Class I record of a jaguar from 1962 through September 11, 2013 (Table 1 in the ''Class I Records'' section, above). We also selected polygons that fell partially or entirely within 1 km (0.4 mi) of these polygons because most of the GIS datasets we used were of a 1-km^2 (0.4-mi^2) resolution (pixel size), and, therefore, we determined that this was the distance within which some mapping error may have occurred. If the area within the selected polygons did not meet the minimum size criterion of 100 km^2 (38.6 mi^2) when added

together, we removed those polygons from further consideration.

We placed a 1-km (0.4-mi) buffer around the remaining polygons to account for mapping error, but did not apply this buffer to areas in which the vegetation community was other than Madrean evergreen woodland or semidesert grassland, or areas in which the HII was 20 or more (see ''Habitats Protected from Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species,'' above). The vegetation community data we used were not mapped at a 1-km^2 (0.4-mi^2) resolution, and, therefore, we determined the 1-km (0.4-mi) buffer did not apply to this dataset. Our rationale for ensuring only areas in which the HII was less than 20 (as described in the ''Habitats Protected from Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species'' section, above) were included in the designation was based on Sanderson and Fisher (2011, p. 11), in which they described low human influence as being essential to the jaguar; we, therefore, did not include any areas in which this PCE was absent because of its importance in describing jaguar habitat. We also removed areas above 2,000 m (6,562 ft) (PCE 6). Small areas of 1 km^2 (0.4 mi^2) or less (our tolerance buffer as described above) that were excluded within the polygons were then included, as these areas were of a size in which a mapping error could have occurred. For the same reason, we also removed small areas of 1 km^2 (0.4 mi^2) or less (our tolerance buffer as described above) around the edges of the polygons if, due to the steps described above, they were disconnected or connected only by corners.

(2) If a polygon described in step 1, above, was not connected to Mexico, we selected and added areas containing low human influence and impact and either or both vegetative cover or rugged terrain to connect these areas directly to Mexico or to another occupied area connected directly to Mexico.

Therefore, we are designating six units based on sufficient elements of the essential physical or biological feature being present to support jaguar life-history processes. The occupied mountain ranges within the units contain all of the identified elements of the physical or biological feature necessary for jaguars. The unoccupied areas denoted as Subunits 1b, 4b, and 4c are essential for the conservation of the species, as they provide the jaguar connectivity with Mexico within the Northwestern Recovery Unit.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological feature necessary for jaguars. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological feature in the adjacent critical habitat.

Based on our analyses of areas as both occupied and unoccupied (but essential for the conservation of the species), we are designating critical habitat lands that we have determined may have been occupied at the time of listing and contain sufficient elements of the physical or biological feature to support life-history processes essential for the conservation of the species and lands outside of the geographical area that may have been occupied at the time of listing that we have determined are also essential. In our analysis we also evaluated the areas we consider occupied at the time of listing and determined that these same areas are also essential for the conservation of jaguars in the Northwestern Recovery Unit and, therefore, for the species as a whole (see *Areas Essential for the Conservation of Jaguars,* above).

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0042, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Final Critical Habitat Designation

We are designating 6 units as critical habitat for the jaguar. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those 6 units are: (1) Baboquivari Unit divided into subunits (1a) Baboquivari-Coyote Subunit, including the Northern Baboquivari, Saucito, Quinlan, and Coyote Mountains, and (1b) the Southern Baboquivari Subunit; (2) Atascosa Unit, including the Pajarito, Atascosa, and Tumacacori Mountains; (3) Patagonia Unit, including the Patagonia, Santa Rita, Empire, and Huachuca Mountains, and the Canelo and Grosvenor Hills; (4) Whetstone Unit, divided into subunits (4a) Whetstone Subunit, (4b) Whetstone-Santa Rita Subunit, and (4c) Whetstone-Huachuca Subunit; (5) Peloncillo Unit, including the Peloncillo Mountains both in Arizona and New Mexico; and (6) San Luis Unit, including the northern extent of the San Luis Mountains at the New Mexico-Mexico border. Table 2 lists both the unoccupied units and those that may have been occupied at the time of listing.

TABLE 2—OCCUPANCY OF JAGUAR BY DESIGNATED CRITICAL HABITAT UNITS

Unit	Occupied at time of listing
1—Baboquivari Unit:	
1a—Baboquivari-Coyote Subunit:	
Coyote Mountains	Yes.
Quinlan Mountains	Yes.
Saucito Mountains	Yes.
Northern Baboquivari Mountains	Yes.
1b—Southern Baboquivari Subunit:	
Southern Baboquivari Mountains Connection	No.
2—Atascosa Unit:	

TABLE 2—OCCUPANCY OF JAGUAR BY DESIGNATED CRITICAL HABITAT UNITS—Continued

Unit	Occupied at time of listing
Tumacacori Mountains	Yes.
Atascosa Mountains	Yes.
Pajarito Mountains	Yes.
3—Patagonia Unit:	
Empire Mountains	Yes.
Santa Rita Mountains	Yes.
Grosvenor Hills	Yes.
Patagonia Mountains	Yes.
Canelo Hills	Yes.
Huachuca Mountains	Yes.
4—Whetstone Unit:	
4a—Whetstone Subunit:	
Whetstone Mountains	Yes.
4b—Whetstone-Santa Rita Subunit:	
Whetstone-Santa Rita Mountains Connection	No.
4c—Whetstone-Huachuca Subunit:	
Whetstone-Huachuca Mountains Connection	No.
5—Peloncillo Unit:	
Peloncillo Mountains (Arizona and New Mexico)	Yes.
6—San Luis Unit:	
San Luis Mountains (New Mexico)	Yes.

The approximate area of each critical habitat unit is shown in Table 3.

TABLE 3—DESIGNATED CRITICAL HABITAT UNITS FOR JAGUAR

Unit or subunit	Federal		State		Tribal		Private		Total	
	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac
1a—Baboquivari-Coyote Subunit	4,396	10,862	9,239	22,831	0	0	3,290	8,130	16,925	41,823
1b—Southern Baboquivari Subunit	624	1,543	6,157	15,213	0	0	1,843	4,555	8,624	21,312
2—Atascosa Unit	53,807	132,961	2,296	5,672	0	0	2,522	6,231	58,625	144,865
3—Patagonia Unit	101,354	250,452	11,847	29,274	0	0	29,046	71,775	142,248	351,501
4a—Whetstone Subunit	16,066	39,699	5,445	13,455	0	0	3,774	9,325	25,284	62,479
4b—Whetstone-Santa Rita Subunit	532	1,313	4,612	11,396	0	0	0	0	5,143	12,710
4c—Whetstone-Huachuca Subunit	1,350	3,336	2,981	7,366	0	0	3,391	8,379	7,722	19,081
5—Peloncillo Unit	28,393	70,160	7,861	19,426	0	0	5,317	13,138	41,571	102,724
6—San Luis Unit	0	0	0	0	0	0	3,122	7,714	3,122	7,714
Grand Total	206,522	510,326	50,437	124,633	0	0	52,304	129,247	309,263	764,207

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for jaguar, below.

Unit 1: Baboquivari Unit

Subunit 1a—Baboquivari-Coyote Subunit: Subunit 1a consists of 16,925 ha (41,823 ac) in the northern Baboquivari, Saucito, Quinlan, and Coyote Mountains in Pima County, Arizona. The main, larger section of this subunit is generally bounded by the eastern boundary of the Tohono O'odham Nation to the west and north, the western side of the Altar Valley to the east, and up to and including Leyvas Canyon and Three Peaks to the south. There are four small areas of land that are disconnected from the main section of this subunit. One is a privately owned area within the boundaries of the Tohono O'odham Nation approximately 4 km (2.5 mi) west of the main, largest section and approximately 22.7 km (14.1 mi) south of State Highway 86. The second largest area is almost directly north of the main, largest section and is primarily Federally and State owned, with a small amount of private land included within the boundary. Between this area and the main, largest section is a small piece of State land included within the boundary. The last area is north and slightly west of the main section, and is a privately owned area within the boundaries of the Tohono O'odham Nation. Land ownership within the entire unit includes approximately 4,396 ha (10,862 ac) of Federal lands; 9,239 ha (22,831 ac) of Arizona State lands; and 3,290 ha (8,130 ac) of private lands. The Federal land is administered by the Service and Bureau of Land Management. We consider the Baboquivari-Coyote Subunit occupied at the time of listing (37 FR 6476; March 30, 1972) (see ''Occupied Area at the Time of Listing'' section, above), and it may be currently occupied, based on jaguar photos from 1996 and from 2001–2008 (see Table 1 in the ''Class I Records'' section, above). It contains all

elements of the physical or biological feature essential to the conservation of the jaguar, except for connectivity to Mexico.

The primary land uses within Subunit 1a include ranching, grazing, border-related activities, Federal land management activities, and recreational activities throughout the year, including, but not limited to, hiking, birding, horseback riding, and hunting. Activities that may require special management may include, for example, habitat clearing, the construction of facilities, expansion of linear projects that may fragment jaguar habitat, some fuels-management activities, and some prescribed fire.

Subunit 1b—Southern Baboquivari Subunit: Subunit 1b consists of 8,624 ha (21,312 ac) in the southern Baboquivari Mountains in Pima County, Arizona. This subunit is generally bounded by the eastern boundary of the Tohono O'odham Nation to the west, up to but not including Leyvas and Bear Canyons to the north, the western side of the Altar Valley to the east, and the U.S.-Mexico border to the south. There is one small, privately owned area within the boundaries of the Tohono O'odham Nation that is disconnected from the main section of this subunit. It is located approximately 1.2 km (0.75 mi) west of the main, largest section and approximately 10 km (6.2 mi) north of the U.S.-Mexico border. Land ownership within the unit includes approximately 624 ha (1,543 ac) of Federal lands; 6,157 ha (15,213 ac) of Arizona State lands; and 1,843 ha (4,555 ac) of private lands. The Federal land is administered by the Service and Bureau of Land Management. The Southern Baboquivari Subunit provides connectivity to Mexico and was not occupied at the time of listing, but is essential to the conservation of the jaguar because it contributes to the species' persistence by providing connectivity to occupied areas.

The primary land uses within Subunit 1b include ranching, grazing, border-related activities, Federal land management activities, and recreational activities throughout the year, including, but not limited to, hiking, birding, horseback riding, and hunting.

Unit 2: Atascosa Unit

Unit 2 consists of 58,625 ha (144,865 ac) in the Pajarito, Atascosa, and Tumacacori Mountains in Pima and Santa Cruz Counties, Arizona. Unit 2 is generally bounded by the eastern side of San Luis Mountains (Arizona) to the west, roughly 4 km (2.5 mi) south of Arivaca Road to the north, Interstate 19 to the east, and the U.S.-Mexico border to the south. Land ownership within the unit includes approximately 53,807 ha (132,961 ac) of Federal lands; 2,296 ha (5,672 ac) of Arizona State lands; and 2,522 ha (6,231 ac) of private lands. The Federal land is administered by the Coronado National Forest and Bureau of Land Management. We consider the Atascosa Unit occupied at the time of listing (37 FR 6476; March 30, 1972) (see ''Occupied Area at the Time of Listing'' section, above), and it may be currently occupied based on multiple photos of two, or possibly three, jaguars from 2001–2008 (see Table 1 in the ''Class I Records'' section, above). It contains all elements of the physical or biological feature essential to the conservation of the jaguar.

The primary land uses within Unit 2 include Federal land management activities, border-related activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Activities that may require special management may include, for example, habitat clearing, the construction of facilities, expansion of linear projects that may fragment jaguar habitat, some fuels-management activities, and some prescribed fire.

Unit 3: Patagonia Unit

Unit 3 consists of 142,248 ha (351,501 ac) in the Patagonia, Santa Rita, Empire, and Huachuca Mountains, as well as the Canelo and Grosvenor Hills, in Pima, Santa Cruz, and Cochise Counties, Arizona. Unit 3 is generally bounded by a line running roughly 3 km (1.9 mi) east of Interstate 19 to the west; a line running roughly 6 km (3.7 mi) south of Interstate 10 to the north; Cienega Creek and Highways 83, 90, and 92 to the east, including the eastern slopes of the Empire Mountains; and the U.S.-Mexico border to the south. Land ownership within the unit includes approximately 101,354 ha (250,452 ac) of Federal lands; 11,847 ha (29,274 ac) of Arizona State lands; and 29,046 ha (71,775 ac) of private lands. The Federal land is administered by the Coronado National Forest, Bureau of Land Management, and National Park Service. We consider the Patagonia Unit occupied at the time of listing (37 FR 6476; March 30, 1972) based on the 1965 record from the Patagonia Mountains (see ''Occupied Area at the Time of Listing'' section, above) and currently occupied based on photos taken from October 2012, through September 11, 2013, of a male jaguar in the Santa Rita Mountains (see Table 1 in the ''Class I Records'' section, above). The mountain ranges within this unit contain all elements of the physical or biological feature essential to the conservation of the jaguar.

The primary land uses within Unit 3 include Federal land management activities, border-related activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Activities that may require special management may include, for example, habitat clearing, the construction of facilities, expansion of linear projects that may fragment jaguar habitat, some fuels-management activities, and some prescribed fire.

Unit 4: Whetstone Unit

Subunit 4a—Whetstone Subunit: Subunit 4a consists of 25,284 ha (62,479 ac) in the Whetstone Mountains, including connections to the Santa Rita and Huachuca Mountains, in Pima, Santa Cruz, and Cochise Counties, Arizona. Subunit 4a is generally bounded by a line running roughly 4 km (2.5 mi) east of Cienega Creek to the west, a line running roughly 6 km (3.7 mi) south of Interstate 10 to the north, Highway 90 to the east, and Highway 82 to the south. Land ownership within the subunit includes approximately 16,066 ha (39,699 ac) of Federal lands; 5,445 ha (13,455 ac) of Arizona State lands; and 3,774 ha (9,325 ac) of private lands. The Federal land is administered by the Coronado National Forest and Bureau of Land Management. We consider the Whetstone Subunit 4a occupied at the time of listing (37 FR 6476; March 30, 1972) (see ''Occupied Area at the Time of Listing'' section, above), and, based on photographs taken in 2011, it may be currently occupied (see Table 1 in the ''Class I Records'' section, above). The mountain range within this subunit contains all elements of the physical or biological feature essential to the conservation of the jaguar, except for connectivity to Mexico.

The primary land uses within Subunit 4a include Federal land management activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Activities that may require special management may include, for example, habitat clearing, the construction of facilities, expansion of linear projects that may fragment jaguar habitat, some fuels-management activities, and some prescribed fire.

Subunit 4b—Whetstone-Santa Rita Subunit: Subunit 4b consists of 5,143 ha (12,710 ac) between the Empire Mountains and northern extent of the Whetstone Mountains in Pima County,

Arizona. Subunit 4b is generally bounded by (but does not include): The eastern slopes of the Empire Mountains to the west, a line running roughly 6 km (3.7 mi) south of Interstate 10 to the north, the western slopes of the Whetstone Mountains to the east, and Stevenson Canyon to the south. Land ownership within the subunit includes approximately 532 ha (1,313 ac) of Federal lands and 4,612 ha (11,396 ac) of Arizona State lands. The Whetstone-Santa Rita Subunit provides connectivity from the Whetstone Mountains to Mexico and was not occupied at the time of listing, but is essential to the conservation of the jaguar because it contributes to the species' persistence by providing connectivity to occupied areas.

The primary land uses within Subunit 4b include grazing and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting.

Subunit 4c—Whetstone-Huachuca Subunit: Subunit 4c consists of 7,722 ha (19,081 ac) between the Huachuca Mountains and southern extent of the Whetstone Mountains in Santa Cruz and Cochise Counties, Arizona. Subunit 4c is generally bounded by Highway 83, Elgin-Canelo Road, and Upper Elgin Road to the west; Highway 82 to the north; a line running roughly 4 km (2.5 mi) west of Highway 90 to the east; and up to but not including the Huachuca Mountains to the south. Land ownership within the subunit includes approximately 1,350 ha (3,336 ac) of Federal lands; 2,981 ha (7,366 ac) of Arizona State lands; and 3,391 ha (8,379 ac) of private lands. The Federal land is administered by the Coronado National Forest and Bureau of Land Management. The Whetstone-Huachuca Subunit provides connectivity from the Whetstone Mountains to Mexico and was not occupied at the time of listing, but is essential to the conservation of the jaguar because it contributes to the species' persistence by providing connectivity to occupied areas.

The primary land uses within Subunit 4c include Federal forest management activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting.

Unit 5: Peloncillo Unit

Unit 5 consists of 41,571 ha (102,724 ac) in the Peloncillo Mountains in Cochise County, Arizona, and Hidalgo County, New Mexico. Unit 5 is generally bounded by the eastern side of the San Bernardino Valley to the west, Skeleton Canyon Road and the northern boundary of the Coronado National Forest to the north, the western side of the Animas Valley to the east, and the U.S.-Mexico border on the south. Land ownership within the unit includes approximately 28,393 ha (70,160 ac) of Federal lands; 7,861 ha (19,426 ac) of Arizona State lands; and 5,317 ha (13,138 ac) of private lands. The Federal land is administered by the Coronado National Forest and Bureau of Land Management. We consider the Peloncillo Unit occupied at the time of listing (37 FR 6476; March 30, 1972) (see ''Occupied Area at the Time of Listing'' section, above), and it may be currently occupied based on a track documented in 1995 and photographs taken in 1996 (see Table 1 in the ''Class I Records'' section, above). It contains all elements of the physical or biological feature essential to the conservation of the jaguar.

The primary land uses within Unit 5 include Federal land management activities, border-related activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Activities that may require special management may include, for example, habitat clearing, the construction of facilities, expansion of linear projects that may fragment jaguar habitat, some fuels-management activities, and some prescribed fire.

Unit 6: San Luis Unit

Unit 6 consists of 3,122 ha (7,714 ac) in the northern extent of the San Luis Mountains in Hidalgo County, New Mexico. Unit 6 is generally bounded by the eastern side of the Animas Valley to the west, a line running roughly 1.5 km (0.9 mi) south of Highway 79 to the north, an elevation line at approximately 1,600 m (5,249 ft) on the east side of the San Luis Mountains, and the U.S.-Mexico border to the south. Land within the unit is entirely privately owned. We consider the San Luis Unit occupied at the time of listing (37 FR 6476; March 30, 1972) (see ''Occupied Area at the Time of Listing'' section, above), and it may be currently occupied based on photographs taken in 2006 (see Table 1 in the ''Class I Records'' section, above). Unit 6 contains almost all elements of the physical or biological feature essential to the conservation of the jaguar except for expansive open space of at least 100 km^2 (38.6 mi^2). This unit is included because, while by itself it does not provide at least 100 km^2 (38.6 mi^2) of jaguar habitat in the United States, additional habitat can be found immediately adjacent south of the U.S.-Mexico border, and, therefore, this area represents a small portion of a much larger area of habitat.

The primary land uses within Unit 6 include border-related activities, grazing, and some recreational activities throughout the year, including, but not limited to, hiking, horseback riding, and hunting. Activities that may require special management may include, for example, habitat clearing, the construction of facilities, expansion of linear projects that may fragment jaguar habitat, some fuels-management activities, and some prescribed fire.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species 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 and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Determinations of Adverse Effects and Application of the ''Adverse Modification'' Standard

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.

Section 7(a)(2) of the Act requires Federal agencies to ensure their actions do not jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. The key factor involved in the destruction/adverse modification determination for a proposed Federal agency action is whether the affected critical habitat would continue to serve its intended conservation role for the species with implementation of the proposed action after taking into account any anticipated cumulative effects (Service 2004, *in litt.* entire). Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the jaguar. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

In general, there are five possible outcomes in terms of how proposed Federal actions may affect the PCEs or physical or biological feature of jaguar critical habitat: (1) No effect; (2) wholly beneficial effects (e.g., improve habitat condition); (3) both short-term adverse effects and long-term beneficial effects; (4) insignificant or discountable adverse effects; or (5) wholly adverse effects.

Actions with no effect on the PCEs and physical or biological feature of jaguar critical habitat do not require section 7 consultation, although such actions may still have adverse or beneficial effects on the species itself that require consultation. Examples of these actions may include grazing, ranching operations, routine border security activities, or limited recreational activity, which we anticipate would not result in adverse effects or adverse modification to jaguar critical habitat, but may still require section 7 review for effects to the species itself.

Actions with effects to the PCEs or physical and biological feature of jaguar critical habitat that are discountable, insignificant, or wholly beneficial are considered not likely to adversely affect critical habitat and do not require formal consultation if the Service concurs in writing with that Federal action agency determination. Examples of these actions may include some fuels-management activities, prescribed fire, or closing and re-vegetating roads.

Actions with adverse effects to the PCEs or physical or biological feature in the short term, but that result over the long term in an improvement in the function of the habitat to the jaguar would likely not constitute adverse modification of critical habitat either, although due to the adverse effects, these actions may require formal consultation. We anticipate that actions consistent with the stated goals or recovery actions of the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, entire) or the future recovery plan for the species, once completed, would fall into this category.

Actions that are likely to adversely affect the PCEs or physical or biological feature of jaguar critical habitat require formal consultation and the preparation of a biological opinion by the Service. The biological opinion sets forth the basis for our section 7(a)(2) determination as to whether the proposed Federal action is likely to destroy or adversely modify jaguar critical habitat. Some activities may adversely affect the PCEs, but not result in adverse modification of critical habitat. Activities that may destroy or adversely modify critical habitat are those that alter the essential physical or biological feature of the critical habitat to an extent that appreciably reduces the conservation value of the critical habitat for the listed species.

As discussed above, the conservation role or value of jaguar critical habitat is to provide areas to support some individuals during transient movements by providing patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit. Therefore, actions that could destroy or adversely modify jaguar critical habitat include those that would permanently sever connectivity to Mexico or within a critical habitat unit such that movement of jaguars between habitat in the United States and Mexico is eliminated. In general, such activities could include building impermeable fences (such as

pedestrian fences discussed in *Special Management Considerations or Protection,* above) in areas of vegetated rugged terrain or major road construction projects (such as new highways or significant widening of existing highways). Activities that may adversely affect the PCEs (such as permanently displacing native prey species, increasing the distance to water to more than 10 km (6.2 mi), removing tree cover, altering rugged terrain, or appreciably increasing human presence on the landscape), but may not destroy or adversely modify critical habitat could include habitat clearing, the construction of facilities, or expansion of linear projects that may fragment jaguar habitat and reduce the amount of habitat available but that do not permanently sever essential movement between the United States and Mexico or within a given critical habitat unit.

At this time, we do not anticipate activities such as grazing, ranching operations, or limited recreational activity would have adverse effects to jaguar critical habitat, nor do we anticipate activities consistent with the stated goals or recovery actions of the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, entire) or the future recovery plan for the species would constitute adverse modification. We also do not anticipate further impermeable fencing being built in areas with rugged terrain, as technological solutions (such as video surveillance) for Homeland Security purposes are more likely to be applied in these areas. We also are unaware of any plans to expand highways through jaguar critical habitat. We are aware of two large-scale mining operations. One is the Rosemont Mine that has been evaluated within jaguar revised proposed critical habitat (this consultation was completed prior to this final rule designating critical habitat). We have evaluated this project through the section 7 consultation process, and our determination is that it does not constitute destruction or adverse modification of jaguar critical habitat. The other is the Hermosa Mine, but this project is only in the planning phase and the Service has not received mine development plans. Consequently, section 7 consultation has not been initiated.

We are aware of two large-scale mining operations. One is the Rosemont Mine that has been evaluated within jaguar revised proposed critical habitat (this consultation was completed prior to this final rule designating critical habitat). We have evaluated this project through the section 7 consultation process, and our determination is that it does not constitute destruction or adverse modification of jaguar critical habitat. The other is the Hermosa Mine but this is only in the planning phase and the Service has not received mine development plans. Consequently, section 7 consultation has not been initiated.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an Integrated Natural Resources Management Plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the critical habitat designation for the jaguar to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are Department of Defense lands with completed, Service-approved INRMPs within the final critical habitat designation.

Approved INRMPs

Fort Huachuca—Unit 3 and Subunit 4c, Arizona

Fort Huachuca is located in Cochise County, in southeast Arizona, about 24 km (15 mi) north of the border with Mexico. Fort Huachuca is home to the U.S. Army Intelligence Center and the U.S. Army Network Enterprise Technology Command (NETCOM)/9th Army Signal Command. There are approximately of 6,421 ha (15,867 ac) of critical habitat on Fort Huachuca. Approximately 6,117 ha (15,115 ac) are in Unit 3, and approximately 304 ha (752 ac) are in Subunit 4c.

Habitat features essential to jaguar conservation exist on Fort Huachuca. Nearly 95 percent of the activities on Fort Huachuca are military intelligence and communications systems testing and training. Other activities on the installation include field-training exercises, aviation activities, live-fire qualification and training, vehicle maneuver training, and administrative and support activities. Fort Huachuca's military mission is not heavily land-based. Generally, direct and repeated impacts have been restricted to localized areas. Fort Huachuca has an approved INRMP, completed in 2002 and updated in 2013 to specifically address the jaguar. Appendix 7 was added to focus on specific benefits of the INRMP to federally listed species, including the jaguar. Appendix 7 outlines how INRMP management actions provide conservation benefits for the jaguar. These actions include: ecosystem and hunting management intended to ensure adequate jaguar prey; water resource protection measures; fire management activities that maintain canopy cover; prohibition of recreation at night; briefings on threatened and endangered species; and a cooperative relationship with the University of Arizona's Wild Cat Research and Conservation Center. The U.S. Army is committed to working closely with the Service and Arizona Game and Fish Department to continually refine the existing INRMP as part of the Sikes Act's INRMP review process. Based on our review of the INRMP for this military installation, and in accordance with section 4(a)(3)(B)(i) of the Act, we

have determined that the portion of Unit 3 and Subunit 4c within this installation, identified as meeting the definition of critical habitat, is subject to the INRMP, and that conservation efforts identified in this INRMP will provide a benefit to the jaguar. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B) of the Act.

Fort Huachuca's 2013 INRMP includes benefits for jaguars and their habitat that were not included in their previous INRMP. The INRMP protects the PCEs, through:

(1) Providing connectivity to Mexico

a. Providing connectivity to Mexico through lands owned by the Fort by maintaining wildlife-permeable fencing around the perimeter of the Fort;

b. Minimal training and testing occurring in the rugged areas of the Huachuca Mountains because the vast majority of training and testing can effectively be conducted elsewhere (access to the mountains is limited by rugged topography and single lane, four-wheel drive dirt roads);

c. Maintaining large open areas in the mountains on the Fort by avoiding construction activities in those areas;

d. Developing partnerships to protect land and natural resources beyond the installation and across administrative boundaries;

i. Obtaining conservation easements on private lands from private landowners within the Sierra Vista subwatershed (an area of approximately 6,475 km² (2,500 mi²) in size containing the Fort, City of Sierra Vista, Huachuca City, and most of the San Pedro Riparian National Conservation Area) to reduce the potential for incompatible land use by buffering agricultural and undeveloped areas under airspace and to manage the regional water table adjacent to the San Pedro Riparian National Conservation Area through the Army Compatible Use Buffer Program.

(2) Containing adequate levels of native prey

a. Employing an ecosystem management approach benefiting all native species, including jaguars and their prey;

b. Coordinating with the Arizona Game and Fish Department to limit the number of deer and javelina hunting permits issued within the Fort's boundaries to ensure adequate prey are available for the top predators known to occur on the installation.

(3) Including surface water sources within 20 km (12.4 mi) of one another:

Managing pond and spring habitat on the installation for threatened and endangered species, especially where habitat has been degraded or lost or where potential exists for improving habitat.

(4) Containing greater than 1 percent to 50 percent canopy cover

a. Coordinating on prescribed fire and fuel management activities in the Huachuca Mountains with the U.S. Forest Service, State Parks, State Lands, The Nature Conservancy, San Pedro National Conservation Area, Audubon Research Ranch, and private ranchers, and as specified in the Fort's Integrated Wildland Fire Management Plan such that natural fire regimes will eventually be restored;

b. Managing invasive species to protect natural resources and critical habitat for threatened and endangered species.

(5) Characterized by intermediately, moderately, or highly rugged terrain:

No activities occurring or planned to occur in the mountains affecting or altering the terrain.

(6) Characterized by minimal to no human population

a. Controlling human activity and road/infrastructure development in potential jaguar habitat (no major roads occur within the installation);

b. Closing all canyons within the Huachuca Mountains to recreational use between sunset and sunrise (the most active time for jaguars);

c. Minimizing impacts from field training activities by conducting these activities outside of mountainous areas, except for a minimal amount of equipment testing along roadsides;

d. Providing environmental awareness training to Special Forces units that occasionally request conducting patrolling training in the mountains to minimize their impact on jaguars and jaguar habitat;

e. Maintaining dark skies in mountainous areas within the installation;

f. Minimizing impacts from low-level helicopter and Unmanned Aerial Systems flights (the predominant types of flights conducted over the Fort) by avoiding them over the Huachuca Mountains at altitudes below 152 m (500 ft) above ground level, except for life, health and safety purposes.

(7) Providing additional ongoing activities benefiting the jaguar

a. Cooperating with the University of Arizona's Wild Cat Research and Conservation Center to permit surveying and monitoring for the jaguar on the installation;

b. Providing threatened and endangered species awareness training to troops [in safety briefings];

c. Completing game species management plans (including hunting);

d. Installing and maintaining all-weather signs along the single-lane dirt roads within Huachuca and Garden Canyons, and their tributary canyons with trails, that inform visitors that the Canyon is home to sensitive species and require visitors to stay on trails and be as quiet and unobtrusive as possible;

e. Ensuring that no seeding/planting of nonnative grasses or other plants will occur on the installation that may alter fire frequencies in the wildland areas;

f. Employing an adaptive management framework providing natural resources management at the ecosystem level.

Implementation of these activities on the Fort is currently conducted in a manner that minimizes impacts to jaguars and their habitat. This military installation has an approved INRMP that provides a benefit to the jaguar, and Fort Huachuca has committed to work closely with the Service and the State wildlife agency to continually refine their existing INRMP as part of the Sikes Act's INRMP review process.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2013 INRMP for Fort Huachuca provide a benefit to the jaguar and its habitat. Therefore, lands subject to the INRMP for Fort Huachuca, which includes the lands leased from the Department of Defense by other parties, are exempt from critical habitat designation under section 4(a)(3) of the Act, and we are not including approximately 6,117 ha (15,115 ac) of Unit 3 and approximately 304 ha (752 ac) in Subunit 4c for a total of 6,421 ha (15,867 ac) in this final critical habitat designation because of this exemption.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding

which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise her discretion to exclude the area only if such exclusion would not result in the extinction of the species.

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.

The principal benefit of including an area in a critical habitat designation is the requirement for Federal agencies to ensure actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must also consult with us on actions that may affect a listed species to ensure their proposed actions are not likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate step and different standard from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat.

The two regulatory standards are different and, significantly, the factors that are reviewed under each standard are different as well. The jeopardy analysis investigates the action's impact to survival and recovery of the species with a focus on how the action affects attributes such as numbers, distribution, and reproduction of the species. On the other hand, the adverse-modification analysis investigates the action's effects to the designated habitat's contribution to recovery with a focus on the conservation role the habitat plays for the listed species. This difference in the two consultation standards and focus of review, in some instances, will lead to different conclusions. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone because it will provide another and alternative focus on factors affecting listed species. Nonetheless, for many species (in at least some locations) the outcome of these analyses in terms of any required habitat protections will be similar because effects to habitat will often also result in effects to the species.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area due to 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 jaguar, the benefits of critical habitat include public awareness of jaguar presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for the jaguar due to the protection from adverse modification or destruction of critical habitat. In practice, a Federal nexus exists primarily on Federal lands or for projects undertaken, permitted, or funded by Federal agencies. Since jaguars were listed in 1972, we have had no projects on privately owned lands that had a Federal nexus to trigger formal consultation under section 7 of the Act. On Federal lands, we have been consulting with Federal agencies on their effects to jaguar since jaguars were listed.

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 approximately 20,764 ha (51,308 ac) of Tohono O'odham Nation land in Subunit 1a and approximately 10,829 ha (26,759 ac) of Tohono O'odham Nation land in Subunit 1b from the final designation of critical habitat (see *Exclusions Based on Other Relevant Impacts* below).

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis of the proposed critical habitat designation and related factors (78 FR 39237; July 1, 2013). The draft economic analysis, dated May 2013, was made available for public review from July 11, 2013, through August 9, 2013 (78 FR 39237; July 1, 2013), and again from August 29, 2013, through September 13, 2013 (78 FR 53390; August 29, 2013). Following the close of the comment period, a final analysis (dated January 15, 2014) of the potential economic effects of the designation was developed taking into consideration the public comments and any new information (IEc 2014).

The intent of the final economic analysis is to quantify the economic impacts of all potential conservation efforts for the jaguar; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and

beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat. For a further description of the methodology of the analysis, see Chapter 2, Framework for the Analysis of the economic analysis.

The final economic analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The final economic analysis evaluates potential lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the final economic analysis considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe.

The final economic analysis quantifies economic impacts of jaguar conservation efforts associated with the following categories of activity: (1) Federal land management; (2) border protection activities; (3) mining; (4) transportation activities; (5) private residential or commercial development; (6) military activities; (7) livestock grazing and other activities; (8) Tohono O'odham Nation activities; and (9) other limited activities. Given the secretive and transient nature of the jaguar, which makes it difficult to determine whether a particular area is used by jaguars, Federal land managers already take steps to protect the jaguar even without critical habitat by consulting under section 7 jeopardy standards. We do not anticipate recommending incremental conservation measures to avoid adverse modification of critical habitat over and above those recommended to avoid jeopardy of the species, except in cases where an activity could create a situation in which a unit of critical habitat could become inaccessible to jaguars. Major construction projects (such as new highways, significant widening of existing highways, or construction of large facilities or mines) could sever connectivity within these critical habitat units and subunits and could constitute adverse modification. Estimated baseline costs range from $2.8 million to $3.9 million in the first 20 years, with a seven and three percent discount rate, respectively. The total potential incremental economic impacts for all of the categories in areas proposed as revised critical habitat over the next 20 years range from $4.2 million to $5.6 million ($370,000 to $370,000 annualized), assuming a seven and three percent discount rate, respectively. The analysis estimates future potential administrative impacts based on the historical rate of consultations on the jaguar in areas proposed for critical habitat, as discussed in Chapter 2 of the final economic analysis. A brief summary of the estimated impacts within each category is provided below. Please refer to the final economic analysis for a comprehensive discussion of the potential impacts.

Since the jaguar is currently a listed species under the Act, baseline efforts are likely already undertaken to protect the jaguar. In addition, efforts to protect other endangered and threatened species in the area, and the implementation of general conservation measures by land managers likely also provide protection for jaguars. Depending on the discount rate applied, we estimate that these baseline costs will range from $2.8 million and $3.9 million in the first 20 years, with a seven and three percent discount rate, respectively. On an annualized basis, baseline impacts are likely to range from $240,000 to $250,000 depending on the discount rate assumption. Additionally, many baseline measures that benefit the jaguar, such as maintenance of habitat and open space, conservation measures for other species, monitoring, and more are not quantified in this analysis due to a lack of cost data on these actions.

Federal Land Management—The U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), U.S. National Park Service (NPS), and Service land managers in proposed critical habitat areas state that they already consider potential impacts to jaguar when conducting activities within these areas. As such, quantified costs are limited to administrative costs of consultation. Using a seven percent discount rate, baseline costs are $200,000, or $18,000 annualized (2013 dollars), and incremental costs are $180,000, or $16,000 annualized (2013 dollars).

Border Protection—U.S. Customs and Border Protection (CBP) reports that the agency already considers potential impacts of its operations on jaguar in all critical habitat units. Under section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act, the Secretary of the Department of Homeland Security (DHS) is authorized to waive laws where the Secretary of DHS deems it necessary to ensure the expeditious construction of border infrastructure in areas of high illegal entry. However, the CBP does not always waive compliance with the ESA and does engage in section 7 consultation with the Service.

The CBP does not currently anticipate that planned activities in critical habitat areas will cause permanent changes to landscape or sever connectivity to Mexico. Furthermore, the CBP does not anticipate that jaguar critical habitat will change the outcome of future section 7 consultations regarding jaguar and its habitat associated with border operations in critical habitat areas. As such, quantified incremental costs are limited to administrative costs of consultation. Incremental costs, which are estimated to include the additional administrative costs of considering critical habitat in consultation, are anticipated to be $17,000, or $1,500 annualized. While specific future conservation efforts are unknown, we utilize available data on past conservation efforts to estimate that CBP will spend approximately $48,000 per year on jaguar monitoring efforts, as well as $312,000 per consultation on other actions. Using the past consultation as a guide to the number of future actions, we anticipated that in total, using a seven percent discount rate, baseline costs will be $770,000 over 20 years, or $68,000 annualized (2013 dollars), related to approximately two formal consultations over the next 20 years. Incremental costs, which are estimated to include the additional administrative costs of considering critical habitat in consultation, are anticipated to be $17,000, or $1,500 annualized (2013 dollars).

Mining—Incremental project modifications beyond what would have been recommended under the baseline to avoid jeopardy are generally unlikely, unless a project is likely to permanently alter habitat or sever connectivity to Mexico. The Service and a number of land managers agree that few changes to recommendations resulting from consultations in response to critical habitat designation are expected because mining activity generally occurs

in Unit 3, which is considered occupied by the jaguar. However, to the extent that additional conservation efforts are undertaken for critical habitat, estimates of incremental impacts would be understated in the econcomic analysis.

Overall, baseline costs are estimated at $1.2 million ($110,000 on an annualized basis), of which $66,000 ($5,800 on an annualized basis) are administrative impacts. Most of these costs are likely to occur as a result of baseline conservation measures implemented for the protection of the jaguar, such as road-kill monitoring and the minimization of nighttime lighting; however, we are unable to fully quantify those costs. Although they are included in the baseline estimates where possible, some of these baseline conservation measures are intended to benefit multiple species, and therefore only a portion of these costs may be attributed to conservation of the jaguar.

There are two large-scale mining projects proposed in critical habitat Unit 3, the Rosemont Copper Project and the Hermosa Project, as well as smaller-scale mineral exploration projects. Forecast incremental economic impacts associated with mining operations include costs of addressing adverse modification of critical habitat in the context of a section 7 consultation, as well as costs of implementing associated conservation measures. The incremental analysis forecasts $3.9 million ($340,000 on an annualized basis) in present-value impacts associated with all of the aforementioned mining activities, of which $22,000 ($1,900 annually) are administrative costs.

In October 2013, the Service completed a biological opinion and conference opinion with the U.S. Forest Service providing Federal approval of the Rosemont Mine. The biological opinion concluded that the Rosemont Mine would not constitute jeopardy to the jaguar. A conference opinion was also completed to address the impacts of the Rosemont Mine to the then-proposed critical habitat designation for jaguar, which concluded that the mining operation is not likely to destroy or adversely modify jaguar critical habitat.

The Rosemont Mine is located in a unit of critical habitat that is occupied by the jaguar. Since the jaguar is currently a listed species, conservation efforts are already undertaken to avoid jeopardy to the species in this area and, therefore, the economic impacts are predominantly captured in the baseline. Through our evaluation of impacts of the critical habitat designation, we determined that most of the conservation efforts are not a result of the critical habitat designation itself, but rather a result of the jaguar being a listed species, and, therefore, incremental impacts of the critical habitat designation are largely limited to transactional costs. As a result, the incremental impact, economic or from other relevant factors, of the designation on the mine is expected to be minimal.

Forecast conservation measures are primarily associated with conservation efforts in the biological opinion issued for the Rosemont Mine in October 2013, which includes multiple species in addition to the jaguar. We note that costs associated with incremental project modifications for the Rosemont Mine are included, to the extent that cost information was available. In addition, incremental costs may be associated with conservation measures such as restoration of surface springs and revegetation, but information on the incremental costs of these measures was not available. The conference opinion notes that some of these efforts, including the management of conservation lands, will be undertaken to benefit multiple species, in addition to the jaguar. Therefore, these costs may overstate the incremental impacts of jaguar critical habitat designation alone.

Transportation—Arizona Department of Transportation (ADOT) already considers potential impacts of its projects on jaguar in the three Arizona counties where critical habitat for the jaguar is proposed. No major roads intersect the proposed critical habitat area in New Mexico. While the construction of new roads has the potential to sever connectivity of jaguar habitat, no such projects are planned in critical habitat areas in the foreseeable future. We estimate that approximately two formal consultations and seven technical assistance efforts will occur related to minor transportation projects over the next 20 years in the critical habitat areas. Incremental costs are estimated to be $5,900, or $520 annualized (2013 dollars). Baseline costs are estimated at $390,000, or $34,000 annualized (2013 dollars), discounted at seven percent.

Private Residential or Commercial Development—The vast majority of the 129,246 acres of privately owned lands designated as jaguar critical habitat are rural and fall outside of any major urban areas. County planners state that these areas are unlikely to be developed in the foreseeable future, with the exception of areas around Patagonia, Santa Cruz County, Arizona, (population as of 2010 was 3,213 U.S. Census Bureau) in Unit 3 and on the eastern border of Unit 2. However, even if these areas are developed, there are unlikely to be any Federal permits or Federal funding for development activities in the privately owned areas designated as jaguar critical habitat. While local ranchers do take advantage of Natural Resources Conservation Service (NRCS) programs, these programs are not expected to play a role in development activities. As such, future consultations related to residential and commercial development activities are not currently anticipated in the critical habitat areas. No incremental impacts of critical habitat designation on residential or commercial development are forecast.

Military—While the jaguar has not recently been documented at Fort Huachuca in Unit 3 and Subunit 4c, the Department of Defense (DOD) is aware that the species can be present and has incorporated the species into its management planning. Both baseline and incremental costs are limited to the administrative costs of consultation. Using a seven percent discount rate, baseline costs are estimated to be $10,000, or $900 annualized over the next 20 years (2013 dollars), and incremental costs are $20,000, or $1,700 annualized (2013 dollars).

Grazing—In general, most private and State lands in the designated critical habitat areas for the jaguar are currently used for agricultural production, most commonly for livestock grazing. These activities do not typically require Federal permitting or funding for operation. However, many ranchers receive some funding from NRCS, often for conducting range improvements or conservation activities. While consultations on NRCS activities are rare, several public commenters as well as NRCS have noted that some ranchers may withdraw applications for NRCS funding following jaguar critical habitat in order to avoid any potential obligations related to consultations between NRCS and the Service. Total administrative baseline impacts to grazing and agriculture are $14,000, or $1,200 annualized over the next 20 years (2013 dollars). Incremental costs, including administrative costs of consultation, are $24,000, or $2,100 annualized over the next 20 years (2013 dollars).

Tribal Activities—Due to the trust relationship between the United States and Native Americans, a significant number of Tribal activities involve Federal funding or oversight that serve as a nexus for section 7 consultation. Therefore, where critical habitat is designated on Tribal lands, many projects will have a Federal nexus for section 7 consultation. Communication with the Tohono O'odham Nation did not identify any specific, planned projects that may result in section 7

consultation. We are also not aware of any previous section 7 consultations regarding activities on Tohono O'odham Nation lands. However, given the likelihood of a Federal nexus and the proposal to designate unoccupied critical habitat on Tohono O'odham lands, the Tohono O'odham Nation could have incurred incremental administrative impacts as a result of the designation. Costs associated with one fully incremental formal consultation considering adverse modification of critical habitat are expected to be $20,000, of which $3,500 could be incurred by the Tohono O'odham Nation. However, the Secretary has used her discretion to exclude the Tohono O'odham Nation based on our ongoing and effective working partnership with the Tohono O'odham Nation to promote the conservation of listed species, including the jaguar and its habitat.

Other Activities—Limited other activities occur within the critical habitat area. We use historical rates of consultation for activities not described above to determine future rates of consultation for other activities. Agencies involved in these consultations have included: the Federal Energy Regulatory Commission (FERC), U.S. Department of Energy, the Corps, Arizona Department of Environmental Quality, the Arizona Department of Water Resources, the U.S. Environmental Protection Agency, the U.S. Department of Agriculture (USDA), the Federal Communications Commission, the Animal and Plant Health Inspection Service, the Federal Aviation Administration, the Federal Emergency Management Agency, and other Federal and non-Federal agencies. In particular, the proposed Sierrita natural gas pipeline may cross the designated areas and would have a Federal nexus through the Federal Energy Regulatory Commission (FERC). Due to limited additional conservation efforts resulting from consultation, we estimate only administrative costs of consultation. Baseline impacts are $180,000, or $16,000 annualized over the next 20 years (2013 dollars), and incremental impacts are $82,000, or $7,300 annualized over the next 20 years (2013 dollars).

TABLE 5—SUMMARY OF FORECAST INCREMENTAL IMPACTS BY ACTIVITY, 2013 TO 2032

[Seven percent discount rate]

Activity	Present value	Annualized	Percent of total impacts	Potential additional impacts
Federal lands management	$180,000	$16,000	4.4	
Border protection	$17,000	$1,500	0.4	
Mining	$3,900,000	$340,000	92	If mining companies choose not to proceed to production due to the designation of critical habitat, economic activity that would have been associated with the mines would not occur.
Transportation	$5,900	$520	0.1	If mining plans move forward, incremental changes to planned road improvements could occur that themselves could result in conservation efforts for jaguar that are not captured in this analysis.
Development	$0	$0	0	
Military	$20,000	$1,700	5.50	
Grazing	$24,000	$2,100	0.5	It is possible that some ranchers may withdraw applications for NRCS funding following jaguar critical habitat in order to avoid any potential obligations to consult with the Service.
Other	$82,000	$7,300	.06	
Tribal	Unquantified	Unquantified	0	Administrative or project modification costs associated with future projects on Tohono O'odham Nation lands. Negative economic impacts on the Nation's ability to manage its lands independent of Federal oversight.
Total:	$420,000,000	$3,700,000	100	

Note: Totals may not sum due to rounding.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exerting her discretion to exclude any areas from this designation of critical habitat for the jaguar based on economic impacts.

A copy of the final economic analysis with supporting documents may be obtained by contacting the Arizona Ecological Services Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

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 exempted from the designation of critical habitat those Department of Defense lands with completed INRMPs determined to provide a benefit to the jaguar. Fort Huachuca lands, as discussed above in *Application of Section 4(a)(3) of the Act* was exempted from designation. There are Department of Defense lands on which the U.S. Customs and Border Protection (CBP) operates along the U.S.-Mexico border. However, we anticipate no impact on national

security. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs 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. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no HCPs or other management plans that address jaguar habitat needs. Accordingly, the Secretary is not exercising her discretion to exclude any areas from this final designation based on HCPs or other private management plans for jaguars. However, below we evaluate impacts to conservation partnerships and consider the government-to-government relationship of the United States with tribal entities.

Tohono O'odham Nation

The Tohono O'odham Nation is located in southern Arizona on lands in Pima, Pinal, and Maricopa Counties. The Tohono O'odham Nation encompasses 1,133,120 ha (2,800,000 ac) of land and is divided into 11 districts. The Tohono O'odham Nation's eastern boundary is located approximately 24 km (15 mi) west of the city of Tucson, and the administrative center is in the town of Sells, approximately 88 km (55 mi) southwest of Tucson. The revised proposed critical habitat designation within the Tohono O'odham Nation boundaries included approximately 20,764 ha (51,308 ac) in Subunit 1a and approximately 10,829 ha (26,759 ac) in Subunit 1b, totaling 31,593 ha (78,067 ac) of Madrean evergreen woodland and semidesert grassland.

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.

We have conducted government-to-government consultation with the Tohono O'odham Nation regarding the designation of critical habitat for the jaguar and continued to do so throughout the public comment period and during development of this final designation of critical habitat for the jaguar. We sent notification letters on May 16, 2012, September 28, 2012, and September 3, 2013, to the Tribe describing the exclusion process under section 4(b)(2) of the Act and engaged in conversations with the Tribe about the proposal to the extent possible without disclosing predecisional information.

We continue to work with the Tohono O'odham Nation and the BIA on wildlife and plant-related projects, including recovery efforts for Sonoran pronghorn and jaguar, as well as surveys and monitoring for Pima pineapple cactus, jaguar, ocelot, lesser long-nosed bat, and cactus ferruginous pygmy owls. We have established and maintain a cooperative working relationship with the Tohono O'odham Nation and the BIA when they request review of environmental assessments, seek technical advice, and conduct consultations for Tohono O'odham Nation projects. Surveys for any listed species are conducted by the BIA or Tohono O'odham Nation personnel prior to implementation of projects. In April of 2003, the Tohono O'odham Nation and the Service signed a Statement of Relationship, which indicates the Tohono O'odham Nation, through its Natural Resources Department, will work in close collaboration with the Service to provide effective protections for listed species.

As a sovereign entity, the Tohono O'odham Nation seeks to continue to protect and manage their resources according to their traditional and cultural practices. The Tohono O'odham Nation requests that their land be excluded from the designation of critical habitat for the jaguar due to their sovereign status and their right to manage their own resources. They are concerned that critical habitat designation on their land would limit the Nation's right to self-determination and self-governance. The Tohono O'odham Nation recognizes that their land contains jaguar habitat, and they consider the jaguar to be culturally significant.

(1) Benefits of Inclusion

As discussed above under *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. Approximately two-thirds of the areas proposed as critical habitat that occur within the Tohono O'odham Nation are considered occupied by the jaguar and, therefore, if a Federal action or permitting occurs, there is a Federal nexus that would result in consultation under section 7 of the Act on these lands whether or not the area is designated as critical habitat. Our section 7 consultation history across the jaguar's range shows that since listing in 1972, no formal consultations have occurred for actions conducted on tribal lands that resulted in adverse effects to jaguars. No formal jaguar consultations have been conducted with the BIA, a likely source of Federal funding for Native American Tribes. Additionally, no informal consultations with agencies implementing actions on tribal lands have been conducted, although we have provided technical assistance on some projects to the Tohono O'odham Nation. Because of how the Tohono O'odham Nation has chosen to manage and conserve its lands and the lack of past section 7 consultation history, we do not anticipate that Tribal actions would considerably change in the future, and we do not anticipate a noticeable increase in section 7.

The draft environmental analysis found that the effects of critical habitat designation on tribal resources are expected to be negligible because (1) new consultations based solely on the presence of designated critical habitat are unlikely, because land managers are already consulting on jaguar throughout the proposed critical habitat areas; and (2) tribal-related activities that currently occur or are anticipated to occur are not likely to require reasonable and prudent

alternatives developed to avoid adverse modification.

Were we to designate critical habitat on Tohono O'odham Nation lands, our section 7 consultation history indicates that there would be few regulatory benefits to the jaguar. As described above, no formal jaguar-related section 7 consultations have occurred on Tribal lands. Further, the Tohono O'odham Nation and the BIA request review of environmental assessments, seek technical advice, and conduct consultations for Tohono O'odham Nation projects. The BIA or Tohono O'odham Nation personnel also conduct surveys for any listed species prior to implementation of projects. In addition, the Tohono O'odham Nation already manages their lands for the benefit of the jaguar and its habitat, adopting voluntary conservation measures on the western side of Unit 1 to ensure habitat protection measures are implemented. For these reasons, it would be highly unlikely that any consultation would result in a determination of adverse modification.

In addition, during coordination with the Tohono O'odham Nation, the Nation indicated that they are not considering any actions that would destroy or adversely modify jaguar critical habitat, they are participating on the Jaguar Recovery Team, and they are implementing a jaguar survey and monitoring project to detect jaguars on Tohono O'odham Nation lands on the west side of the Baboquivari and Coyote Mountains (within Subunits 1a and 1b). Therefore, the Service also does not anticipate that the Tohono O'odham Nation actions would be likely to result in adverse impacts to the jaguar requiring formal section 7 consultations. For these reasons, the beneficial effect of a critical habitat designation on these lands is minimal.

The principal benefit of any designated critical habitat is that activities in and affecting such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. However, because no formal consultations have been conducted on tribal lands or with the BIA, and no informal consultations with agencies implementing actions on tribal lands have been conducted; and because Tohono O'odham Nation has chosen to manage and conserve its lands, coordinates with the Service prior to projects, implements jaguar surveys prior to project implementation, and does not foresee any actions that would destroy or adversely modify jaguar critical habitat, the benefits of a critical habitat designation are minimized.

(2) Benefits of Exclusion

Benefits of excluding these tribal lands from designated critical habitat include our deference to tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the jaguar, and the preservation of our cooperative partnership with the Tohono O'odham Nation. The Service and Tohono O'odham Nation have established and maintain a cooperative conservation partnership for the jaguar, as well as several other listed species that occur on the Nation's lands. Partnership and cooperation have developed through the Jaguar Recovery Team, to which the tribe has appointed a representative. In addition, the Nation is developing a jaguar management plan. While the Service cannot consider draft management plans for exclusions, this plan demonstrates the Nations cooperative conservation partnership with the Service and their commitment to jaguar conservation. In addition, the Nation has been working with the Service to develop a memorandum of agreement to conduct a jaguar survey and monitoring study as identified in the 2012 Jaguar Recovery Outline. Further, the Nation's survey and monitoring plan is consistent with an approved study plan currently under contract with the Service to detect jaguars in the Northwestern Recovery Unit over a 3-year period.

The Tohono O'odham Nation conducts environmental reviews of any project occurring on their lands, which includes surveying for threatened and endangered species (such as the Pima pineapple cactus) and culturally-sensitive species (such as the cactus ferruginous pygmy-owl). They are currently implementing a Tribal Wildlife Grant to establish baseline data on the occupancy and distribution of flora and fauna in the Baboquivari, Quinlan, and Coyote Mountains with the tribal boundary. They are also confirming known populations and identifying previously unknown populations of rare, threatened, or endangered species such as the Chiricahua leopard frog, Kearney's blue star, and Mexican spotted owl. Further, they are identifying species areas of unique biological importance for future monitoring, protection, and management efforts. They are establishing a model for future inventory protocols on the remainder of the tribal lands and are providing for the capability to continue such studies.

The Tohono O'odham Nation assists the Service in monitoring lesser long-nosed bats at a maternity roost on tribal lands, which is only one of three known maternity roosts. By adopting voluntary conservation measures, the Nation ensures that habitat protection measures are implemented. Further, the Nation is committed to working with the Service to ensure their management meets the Service's requirements of both the jaguar and its habitat. These efforts by the Nation demonstrate their past and ongoing cooperation with the Service, and their commitment to continue cooperation with the Service in the future. Further demonstration of the Nations commitment to cooperate with the Service is expressed in their Statement of Relationship (April 2013) to develop and promote communication and understanding to preserve tribal sovereignty and accomplish conservation of natural resources on the Nation's lands.

The benefit of exclusion is the continuance and strengthening of our ongoing and effective working partnership with the Tohono O'odham Nation to promote the conservation of listed species, including the jaguar and its habitat. We consider that conservation benefits, as described above, are being provided to the jaguar and its habitat through our cooperative working relationship with the Tohono O'odham Nation.

We have established a working relationship with the Tohono O'odham Nation through informal and formal meetings that offered information sharing and technical advice and assistance about the jaguar and recommended conservation measures for the species and its habitat. 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 the Tohono O'odham Nation, we recognized and endorsed their fundamental right to provide for tribal resource management activities, including those relating to jaguar habitat.

The designation of critical habitat on these tribal lands would be expected to adversely impact our working relationship with the Tohono O'odham Nation. During our discussions with the Tohono O'odham Nation and through a letter received during our first public

comment period, we were informed that the designation of critical habitat on tribal land would be viewed as an intrusion on their sovereign ability to manage natural resources in accordance with their own policies, customs, and laws. The perceived future restrictions (whether realized or not) of a critical habitat designation could have a damaging effect to coordination efforts, possibly preventing actions that might maintain, improve, or restore habitat for the jaguar and other species. To this end, the Tohono O'odham Nation would prefer to work with us on a government-to-government basis. For these reasons, we believe that our working relationship with the Tohono O'odham Nation would be better maintained and more effective if they are excluded from the designation of critical habitat for the jaguar. The benefits of excluding this area from critical habitat will include the continued cooperation and development of data-sharing and management plans for this and other listed species. If this area is designated as critical habitat, the government-to-government relationship we have with the Tohono O'odham Nation will be damaged and this situation will affect the Service's opportunities to assist the Tohono O'odham Nation with technical reviews, voluntary consultations, and data sharing. We view such opportunities as a substantial benefit since we have developed a cooperative working relationship with the Tohono O'odham Nation for the mutual benefit of jaguar conservation and other endangered and threatened species.

In addition, there are other listed species and habitat on the Tohono O'odham Nation for which conservation efforts of the tribe are important. We believe that the tribe 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 other listed species may be compromised if these tribal lands are designated as critical habitat for the jaguar. Thus, a benefit of excluding these lands would be future conservation efforts that would benefit other listed species.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

The benefits of including the Tohono O'odham Nation in critical habitat 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, and educational awareness. However, as discussed above, these benefits are minimal because they are provided for through other mechanisms, such as the Nation's commitment to jaguar conservation and the maintenance of effective collaboration and cooperation to promote the conservation of the jaguar and its habitat.

Alternatively, the benefits of excluding these areas from critical habitat for the jaguar are more significant and include the continued development and implementation of special management measures and coordination with the Service for the jaguar and other listed species on the Tohono O'odham Nation lands. As discussed above, the Service has established a cooperative conservation partnership with the Nation. Maintaining this relationship is important to the continued conservation of the jaguar, as well as several other listed species, that occur on the Nation's lands. Exclusion from critical habitat designation will allow the Tohono O'odham Nation to manage their natural resources to benefit the jaguar, without the perception of Federal Government intrusion because of the designation of critical habitat on their land. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of this area will likely also provide additional benefits to the species that would not otherwise be available to encourage and maintain cooperative working relationships. Therefore, we find that the benefits of excluding this area from critical habitat designation outweigh the benefits of including this area. Furthermore, conservation of other species and their habitat provides conservation benefits for the environment as a whole, which is a benefit for the jaguar.

(4) Exclusion Will Not Result in Extinction

As noted above, the Secretary, under section 4(b)(2) of the Act, may exclude areas from the critical habitat designation unless it is determined, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. Jaguars range from the southern United States to South America (Swank and Teer 1989, p. 14). Consequently, we have determined that exclusion of the Tohono O'odham Nation from the critical habitat designation will not result in the extinction of the jaguar.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the jaguar during three comment periods. The first comment period associated with the publication of the proposed rule opened on August 20, 2012, and closed on October 19, 2012 (August 20, 2012, 77 FR 50214). The second comment period associated with the proposed revision of critical habitat designation, as well as the associated draft economic analysis and draft environmental assessment, opened July 1, 2013, and closed on August 9, 2013, (July 1, 2013; 78 FR 39237). A third comment period from August 29, 2013, through September 13, 2013 (August 29, 2013, 78 FR 53390), was provided to the public for additional review and comment on the proposed revision of critical habitat designation, as well as the associated draft economic analysis and draft environmental assessment. We received several requests for a public hearing, which we held on July 30, 2013. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis and draft environmental assessment during these comment periods.

We received approximately 33,000 comment letters on this action through the end of the final comment period. All substantive information provided during comment periods has either been incorporated directly into this final designation or addressed below. Comments received were grouped into general issues specifically relating to the critical habitat designation for the jaguar and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from seven knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from six of the seven peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the jaguar. Most of the peer reviewers (five of the six) generally concurred with our methods and conclusions and provided

additional information, clarifications, and suggestions to improve this final rule. One peer reviewer was against critical habitat designation for the jaguar, stating that there is no habitat in the United States at this time that is critical to the survival of the jaguar as a species. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) Comment: There is no habitat in the United States that is critical to the recovery of the jaguar or its survival as a species.

Our response: The Service has identified critical habitat for the jaguar in accordance with the Act and its implementing regulations. Section 4(a)(3)(A) of the Act states that critical habitat shall be designated for endangered and threatened species to the maximum extent prudent and determinable. Designation of critical habitat is not prudent when one or both of the following situations exist (50 CFR 424.12(a)(1)): identification of critical habitat can be expected to increase the degree of a threat or such designation would not be beneficial to the species.

On March 30, 2009, the United States District Court for the District of Arizona (Court) issued an opinion in *Center for Biological Diversity* v. *Kempthorne,* CV 07–372–TUC JMR (Lead) and *Defenders of Wildlife* v. *Hall,* CV08–335 TUC JMR (Consolidated) (D. Ariz., Mar. 30, 2009), that set aside the Service's previous not prudent determination and required the Service issue a new determination on whether designation is prudent, stating that Service regulations at *https://www.federalregister.gov/select-citation/2010/01/13/50-CFR-424.12* (b) require that the Service shall focus on the principal biological constituent elements within the defined area that are essential to the conservation of the species. The court did not order the Service to designate critical habitat, rather the court ordered the Service to reevaluate whether designation of critical habitat for the jaguar is prudent. Thus, in responding to the Court's order, we reevaluated our previous ''not prudent'' finding regarding critical habitat designation for the jaguar. Following a review of the best available information, including the ongoing conservation programs for the jaguar, and information and analysis that became available subsequent to the July 12, 2006, not prudent finding, we determined that the designation of critical habitat for the jaguar would be beneficial to the species. We also determined that designation of critical habitat would not be expected to increase the degree of threat to the species. As such, we no longer find that designation of critical habitat for the jaguar is not prudent under our regulations, and, conversely, determine that designation is prudent. Therefore, we are required to designate critical habitat for the jaguar to fulfill our legal and statutory obligations. Based on the best scientific data available, the Service has determined that designation of critical habitat for the jaguar is prudent and determinable.

The first part of section 3(5)(A) of the Act defines critical habitat as areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features that are essential to the conservation of the species. 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. As discussed in the Background section of the January 13, 2010, Notice of Determination (75 FR 1741), jaguars have been found in the United States in the past and may occur in the United States now or in the future. As such, physical and biological features that can be used by jaguars occur in the United States. We have determined that there are geographical areas in the United States that may have been occupied by the species at the time it was listed. The Service has determined that data are sufficient to determine the physical or biological feature and associated PCEs for jaguar critical habitat. We have determined that the essential physical or biological feature and the associated PCEs essential for jaguar conservation are present in the United States. Critical habitat in the United States contributes to recovery the jaguar's persistence and recovery across the species' entire range by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the proposed Northwestern Recovery Unit.

Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. It is often the case that biological information may be lacking for rare species; however, the Service has used the best available scientific data as required by the Act. We recognize that information currently available for northern jaguars is scant; therefore, we convened a binational Jaguar Recovery Team in 2010 to synthesize information on the jaguar, focusing on a area comprising jaguars in the northernmost portion of their range, the proposed Northwestern Recovery Unit. The Jaguar Recovery Team comprises members from the United States and Mexico, and is composed of two subgroups: a technical subgroup and an implementation subgroup. We have based jaguar critical habitat on information compiled and produced by the Jaguar Recovery Team, to the greatest extent possible. As described in the proposed rule and this final rule, to the greatest extent possible, we based critical habitat boundaries on the physical and biological feature and PCEs from the latest jaguar habitat model produced by the Jaguar Recovery Team (Sanderson and Fisher 2013, entire), which we consider the best commercial and scientific data available. The Jaguar Recovery Team comprises jaguar experts, large-cat experts, and stakeholders from the United States and Mexico; therefore, we consider that the work produced by the team is the best available scientific and commercial data and, subsequently, the best information to use in determining the physical or biological feature and associated PCEs of jaguar critical habitat. Using this information, we have determined that the physical or biological feature of jaguar critical habitat and the associated PCEs are present in the United States, and that these areas were occupied at the time of listing.

(2) Comment: Designation of critical habitat is not due to new data, but due to litigation. The Service's previous 1997 and 2006 not prudent determinations for designating critical habitat for the jaguar were valid decisions, but the 2010 prudent determination to designate critical habitat for the jaguar is not valid. The court did not order the Service to designate critical habitat, but rather to determine if the physical and biological features upon which jaguars depend could be found in the United States and, if so, were essential to the conservation of the species.

Our response: The Service has identified critical habitat for the jaguar in accordance with the Act and its implementing regulations. See our response to comment number 1 in the *Peer Reviewer Comments* above.

(3) Comment: The Service received multiple comments related to the

inclusion of areas north of the proposed critical habitat. Some thought areas north of the proposed critical habitat along the Mogollon Rim in Arizona, and to the north and east into the Gila highlands in New Mexico are where the best biophysical potential for jaguar recovery in the United States exists. Others thought jaguars would use habitat north of the proposed critical habitat, but thought the use and importance of these areas were lower given their distance from breeding populations.

Our response: Areas north of designated critical habitat may be usable by jaguars and may in fact contribute to the recovery of the species. However, these areas do not meet the definition of critical habitat under the Act because they were neither occupied at the time of listing nor are they considered essential to the conservation of the species. See *Areas Essential for the Conservation of Jaguars,* above.

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. However, we have determined that the critical habitat areas that we are designating in the United States are sufficient for the conservation of jaguars. We do not agree that areas in the United States outside of the proposed Northwestern Recovery Unit must be designated as critical habitat to recover the species, as the boundaries of the recovery unit were determined by the Jaguar Recovery Team. All designated areas contain all of the physical and biological features upon which jaguars in the United States depend, including connectivity to Mexico, which is a key component aiding the recovery of the species, or the designated areas are considered essential to the conservation of the jaguar.

(4) Comment: The Service should include designation of additional areas to support a viable, self-sustaining population of jaguars within the United States (of 50 to 100 individuals) in order to recover the species within the United States.

Our response: Creating a viable, self-sustaining population (of perhaps 50 to 100 jaguars) in the United States is not a recovery goal for the jaguar (Jaguar Recovery Team 2012, pp. 38–42). Recovery of the jaguar does not require that areas in the United States contain females, documented breeding, or a self-sustaining population. As discussed in the proposed rule and this final rule, the purpose of designating critical habitat in the United States is to provide areas for transient jaguars (with possibly a few residents) to support the nearest breeding area to the south in Mexico, allowing this population to expand and contract, and, ultimately, recover. It is our intent that the designation of critical habitat will protect the functional integrity of the features essential for jaguar life-history requirements for this purpose into the future.

(5) Comment: The Service should expand critical habitat to represent all ecoregions and biotic communities from which jaguars in the United States have been extirpated, including portions of California, Texas, and possibly Louisiana.

Our response: Designating all the ecoregions and biotic communities in the United States from which jaguars have been extirpated as critical habitat does not meet the definition of critical habitat under the Act because they were neither occupied at the time of listing nor are they considered essential to the conservation of the species. To meet the requirements of the Act, the Service determined areas that were occupied by jaguars at the time of listing that contained the physical and biological features essential to the conservation of the jaguar and unoccupied areas that were essential to the conservation of the jaguar. Additionally, to the greatest extent possible, we based critical habitat unit boundaries on the physical and biological feature and PCEs from the latest jaguar habitat model produced by the Jaguar Recovery Team (Sanderson and Fisher 2013, entire), which is the best commercial and scientific data available. In areas where the critical habitat units did not provide connectivity to Mexico (PCE 1), we identified additional areas to provide this connectivity under the second part of the definition of critical habitat. See *Criteria Used To Identify Critical Habitat,* above. Further, section 3(5)(C) of the Act states that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.

(6) Comment: The lack of detection of jaguars does not indicate the species is absent.

Our response: The Service agrees that the lack of detection does not indicate the species is absent, and we acknowledge this in our proposed rule and this final rule. The Service recognizes that many mobile species are difficult to detect in the wild because of morphological features (such as camouflaged appearance) or elusive behavioral characteristics (such as nocturnal activity) (Peterson and Bayley 2004, pp. 173, 175). This situation presents challenges in determining whether or not a particular area is occupied because we cannot be sure that a lack of detection indicates that the species is absent (Peterson and Bayley 2004, p. 173). However, the Service used the best available data pertaining to jaguar occurrences. See *Occupied Area at the Time of Listing,* above, in this final rule.

(7) Comment: The Service should follow the jaguar habitat modeling efforts of Hatten *et al.* (2005) and Robinson (2006) as a basis for including additional areas in these two states. Hatten *et al.* (2005) identified 21–30 percent of Arizona (approximately 62,000–88,600 km^2 (23,938–34,209 mi^2)) as potential jaguar habitat and Robinson (2006) identified approximately half of New Mexico (approximately 156,800 km^2 (60,541 mi^2)) as potential jaguar habitat.

Our response: Designating all areas of potential habitat in the United States as critical habitat does not meet the definition of critical habitat under the Act because they were neither occupied at the time of listing nor are they considered essential the conservation of the species. We recognize that the area of potential habitat is larger than what we have designated as critical habitat, but as required under the Act, we have designated those areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features that are essential to the conservation of the species; or 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 also 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.

In the Jaguar Recovery Team's analysis and modeling effort, the team considered the modeling efforts of Hatten *et al.* (2005, entire) and Robinson (2006, entire) and further refined the Hatten *et al.* (2005) model such that a similar model could be applied across the entire Northwestern Recovery Unit. The Jaguar Recovery Team provided this

analysis and habitat model in their 2013 report entitled Jaguar Habitat Modeling and Database Update (Sanderson and Fisher 2013, entire). We based critical habitat boundaries on the physical or biological feature and PCEs from the updated habitat modeling report, in which the habitat features preferred by the jaguar in the proposed Northwestern Recovery Unit were described based on the best available science and expert opinion of the Jaguar Recovery Team.

(8) Comment: The Service should expand critical habitat to ensure habitat connectivity. The Service should include linkages between all of the critical habitat units.

Our response: We recognize that connecting critical habitat units in the United States is important to achieve connectivity between the United States and Mexico. We have identified connectivity between expansive open spaces in the United States and Mexico as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States, and we understand that connectivity between expansive open areas of habitat for the jaguar in the United States is necessary if viable habitat for the jaguar is to be maintained. We acknowledge that, based on home range sizes and research and monitoring, jaguars will use valley bottoms (for example, McCain and Childs 2008, p. 7) and other areas of habitat connectivity to move among areas of higher quality habitat found in isolated mountain ranges in the United States. Therefore, in areas where critical habitat was designated based on the first part of the definition of critical habitat (areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features that are essential to the conservation of the species) in which connectivity to Mexico (PCE 1) was not provided through a direct connection to Mexico, we identified areas under the second part of critical habitat (defined in the Act as the 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) to provide this connectivity. We did this by selecting and adding subunits containing low human influence and impact, and either or both vegetative cover or rugged terrain. See *Connectivity between expansive open spaces in the United States and Mexico,* above, in this final rule.

In response to the need to include linkages between all of the critical habitat units within the United States, we determined that no additional areas within the United States must be designated to connect critical habitat units together. As described in the final rule, there is only one occurrence record of a jaguar in a valley between mountain ranges. With only one record, we are unable to describe the features of these areas because of a lack of information. Therefore, while we acknowledge that habitat connectivity within the United States is important, the best available scientific and commercial information does not allow us to determine that any particular area within the valleys is essential, and all of the valley habitat is not essential to the conservation of the species. Therefore, we are not designating any areas within the valleys between the montane habitat as critical habitat. See *Connectivity between expansive open spaces within the United States,* above, in this final rule.

(9) Comment: The Service should include all Class II observations and suspect Class I observations. The Service should include all historic records. The Service is dismissing the current and former U.S. jaguar range. The Service appears to be trying to introduce balance in the treatment of false negative and positive biases in time. However, the more value-neutral approach would be to use both Class I and Class II records.

Our response: The Service considers undisputed Class I records as the best available scientific data to determine occupancy. To meet the requirements of section 3(5)(A)(i) of the Act and its implementing regulations, we are required to define the specific areas within the geographical area occupied by the species at the time it is listed. Determining jaguar occupancy at the time of listing is particularly difficult because jaguars were added to the list many years ago, the species was rare within the United States, and jaguars are, by nature, cryptic and difficult to detect, so defining an area as occupied or unoccupied must be done based on limited information. Class I records are those for which some sort of physical evidence is provided for verification (such as a skin, skull, or photograph); they are considered ''verified'' or ''highly probable'' as evidence for a jaguar occurrence. We determined that undisputed Class I observations from 1962 through September 11, 2013, provided the best scientific and commercial data available, as these are the most reliable and verifiable records for jaguars. Suspect (validity of these locations is questionable) Class I observations, Class II observations, and other historical records represent observations that may have been influenced in some way or that may not, in fact, be a sighting of a jaguar. For these reasons, we determined that undisputed Class I jaguar records are the most reliable; therefore, we used these records to determine critical habitat occupancy. See *Occupied Area at the Time of Listing,* above, in this final rule.

(10) Comment: It is possible that jaguars were not present at the time of listing; however, the absence of jaguars was most certainly the result of human killing of jaguars, and jaguars almost certainly occupied and reproduced in southern Arizona in the late 19th and early 20th century, shortly prior to listing.

Our response: Jaguars were present at the time of listing as well as historically in the United States. Based on the best available information related to jaguar rarity, biology, and survey effort, we determine that areas containing undisputed Class I records from 1962 to the present (September 11, 2013) may have been occupied by jaguars at the time of listing. Our rationale for including these records is based on expert opinion regarding the average lifespan of the jaguar, the consensus being 10 years. It is likely that areas in which jaguar sightings have occurred after 1982 were occupied at the time of the original listing, but jaguars had not been detected because of their rarity, the difficulty in detecting them, and a lack of surveys for the species.

To the extent that uncertainty exists regarding our analysis of these occurrence data, we acknowledge there is an alternative explanation as to whether or not these areas were occupied at the time the jaguar was listed in 1972 (37 FR 6476). The lack of jaguar sightings at that time, as well as some expert opinions cited in our July 22, 1997, clarifying rule (62 FR 39147) (for example, Swank and Teer 1989), suggest that jaguars in the United States had declined to such an extent by that point as to be effectively eliminated. Therefore, an argument could be made that no areas in the United States were occupied by the species at the time it was listed, or that only areas containing undisputed Class I records from between 1962 and 1982 were occupied.

For this reason we also analyzed whether or not critical habitat areas are essential to the conservation of the species. Through our analysis, we determined that they are essential to the conservation of the species because: (1) They have demonstrated recent (since 1996) occupancy by jaguars; (2) they contain features that comprise jaguar habitat; and (3) they contribute to the species' persistence in the United States by allowing the normal demographic

function and possible range expansion of the Northwestern Recovery Unit, which is essential to the conservation of the species (as discussed in the *Jaguar Recovery Planning in Relation to Critical Habitat* section). Therefore, whether or not they were occupied at the time of listing, we are designating them as critical habitat.

(11) Comment: The Service's description of occupancy is not consistent with the Act; no data from 1962 onward indicate any breeding or resident populations of jaguars within the United States, as originally stated in the 1972 rule.

Our response: The Act does not require an area to have a resident population, documented breeding, or females in order to be considered occupied. Rather, section 3(5)(A) of the Act defines the first part of critical habitat as the 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. The Service has determined that physical and biological features that are essential to the conservation of the jaguar occur in the United States. Further, in *Arizona Cattle Grower's Assoc.* v. *Salazar,* 2009 U.S. App. Lexis 29107 (June 4, 2010), the Ninth Circuit affirmed that the Service has the authority to designate as occupied all areas used by a listed species with sufficient regularity that members of the species are likely to be present during any reasonable span of time. Therefore, occupancy of an area can be indicated by the presence of an individual member of the species, and we have determined that areas may have been occupied at the time of listing based on this definition in conjunction with observations of jaguars in those areas (as described in Table 1 of this final rule).

Further, the purpose of critical habitat for the jaguar in the United States is to contribute to the species' persistence and, therefore, overall conservation by providing areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit. Through our analysis, we determined there are areas within the United States containing the physical or biological feature and associated PCEs of jaguar critical habitat to support this function, including adequate food, water, shelter, and space. Therefore, we are designating these areas of critical habitat for the purposes stated above.

(12) Comment: Jaguars do not remain in the United States, nor are they found in abundance in the United States, because areas in the United States provide suboptimal conditions in terms of food and reproduction.

Our response: The purpose of critical habitat for the jaguar in the United States is to contribute to the species' persistence and, therefore, overall conservation by providing areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit. Through our analysis, we determined there are areas within the United States containing the physical or biological feature and associated PCEs of jaguar critical habitat to support this function, including adequate food, water, shelter, and space. Therefore, we are designating these areas of critical habitat for the purposes stated above.

(13) Comment: The central goal statement offered by the proposed rule is to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. The totality of what is necessary in terms of space, quality, or numbers needed to attain viability is not specified anywhere in the proposed rule. The closest approximation is statements to the effect that some amount (not specified) of essential habitat is needed to achieve recovery goals for jaguars in the United States, with the remaining focus on defining essential jaguar habitat, which is not a recovery goal.

Our response: The designation of critical habitat is only one component of recovery for a species. The recovery plan is the appropriate instrument to define recovery goals. The Service is in the process of developing a recovery plan.

(14) Comment: The Service assumes that optimal habitat for jaguars in the United States would be the high mountains or rugged areas, because this is where the most sightings have been reported. However, jaguar prey prefers lowland areas and are only relegated to more rugged regions when the lowland areas have been taken over or destroyed.

Our response: Biological information is often lacking for rare species, particularly with a cryptic species like the jaguar that is difficult to detect. However, the Act requires the Service to make determinations based on the best scientific and commercial data available. The Jaguar Recovery Team produced a habitat model based on the best information available, which indicates that habitat for jaguars in the United States is in rugged, mountainous areas. Therefore, we have utilized this information to inform this designation.

(15) Comment: Areas in the United States will function primarily to support dispersing or transient jaguars, although breeding could have occurred in the past.

Our response: The Service agrees that critical habitat in the United States will function primarily to support dispersing or transient jaguars. Jaguars may have bred in the United States in the past (see Table 1 in Brown and López González 2001, pp. 6–9), but breeding has not been documented recently. As described in the proposed rule and this final rule, the recovery function and value of critical habitat for the jaguar within the United States is to contribute to the species' persistence and, therefore, overall conservation by providing areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit.

(16) Comment: The Service received several comments related to the use of the best available scientific data. Some noted that the Service has used the best available literature and data, and acknowledged that there is a lack of data on jaguar habitat in this region; however, additional data would not result in a significantly different or better map of critical habitat. Conversely, others asserted that the Service did not use the best available scientific data and data is lacking to justify the designation of critical habitat. Others also asserted that the proposed rule continually uses assumptions and speculation as fact.

Our response: In accordance with section 4 of the Act, we are required to designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the 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 (*www.fws.gov/informationquality/*), provide criteria and guidance, and establish procedures 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.

Primary or original information sources are those that are closest to the subject being studied, as opposed to those that cite, comment on, or build upon primary sources. The Act and our regulations do not require us to use only peer-reviewed literature, but instead they require us to use the ''best scientific and commercial data available'' in a critical habitat designation. We use information from many different sources, including articles in peer-reviewed journals, scientific status surveys and studies completed by qualified individuals, Master's thesis research that has been reviewed but not published in a journal, other unpublished governmental and nongovernmental reports, reports prepared by industry, personal communication about management or other relevant topics, conservation plans developed by States and counties, biological assessments, other unpublished materials, experts' opinions or personal knowledge, and other sources. We have relied on published articles, unpublished research, habitat modeling reports, digital data publicly available on the Internet, and the expert opinion of the Jaguar Recovery Team to designate critical habitat for the jaguar.

Also, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited peer review from knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. Additionally, we requested comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the proposed rule. Comments and information we received helped inform this final rule. Further, information provided in comments on the proposed designations and the draft environmental and economic analyses were evaluated and taken into consideration in the development of these final designations, as appropriate.

Information currently available for northern jaguars is scant; therefore, we convened a binational Jaguar Recovery Team in 2010 to synthesize information on the jaguar, focusing on an area comprising jaguars in the northernmost portion of their range, the proposed Northwestern Recovery Unit. The Jaguar Recovery Team comprises members from the United States and Mexico, and is composed of two subgroups: A technical subgroup and an implementation subgroup. The technical subgroup consists of feline ecologists, conservation biologists, and other experts, who advise the Jaguar Recovery Team and the Service on appropriate short- and long-term actions necessary to recover the jaguar. The implementation subgroup consists of landowners and land and wildlife managers from Federal, State, tribal, and private entities, who advise the technical subgroup and the Service on ways to achieve timely recovery with minimal social and economic impacts or costs.

As stated above and in the proposed rule, we have based jaguar critical habitat on information compiled and produced by the Jaguar Recovery Team, to the greatest extent possible. We consider that the work produced by the Jaguar Recovery Team is the best available scientific and commercial data, and that following the team's recommendations is the best avenue for achieving conservation of the species and, by extension, designating critical habitat. We acknowledge that the scientific information regarding the jaguar has limitations and that some of our citations are not specific to these species or geographic area. Nevertheless, the citations offer evidence in basic biological responses for similar species, and we would expect a similar response with the jaguar. Consequently, the Service has used the best available scientific information to support our decision.

(17) Comment: The Service's process of designating critical habitat is logical, consistent, and reasonable, and the data used were carefully evaluated and based on sound ecological principles. The use of the model to identify areas with features important to the jaguar habitat allows areas to be evaluated that have not been surveyed, but have high potential to provide habitat for jaguars. Relying solely on surveys or anecdotes will almost always yield a flawed product because surveys never cover all areas of potential interest, are imperfect for elusive animals that are challenging to detect, and, for species whose populations are thought to be suppressed, there are almost certainly areas on the landscape that can function as habitat, but that are unoccupied because of reduced population levels.

Our response: We agree. In our proposed rule and this final rule, we used the best available scientific information to support our decision. Data reviewed by the Secretary may include, but are not limited to scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts on the subject, and comments from interested parties. We have based jaguar critical habitat on information compiled and produced by the Jaguar Recovery Team, to the greatest extent possible. We consider the work produced by the Jaguar Recovery Team as the best available scientific and commercial data, and that following the team's recommendations is the best avenue for achieving conservation of the species and, by extension, designating critical habitat. The PCEs are based on the latest jaguar habitat model produced by the Jaguar Recovery Team (Sanderson and Fisher 2013, entire), which is the best commercial and scientific data available. Consequently, the Service has used the best available scientific information to support our decision.

(18) Comment: The Service should have considered the population viability analysis (PVA) model in their decision process. The population viability and, related, minimum viable populations, received only passing reference in the proposed rule and with no articulated justification. The PVA concept is central to the notion of recovery in that it informs population targets, which in turn inform habitat targets (the focus of this decision process).

Our response: During the development of the Recovery Outline and as a part of the recovery planning process, the Jaguar Recovery Team worked with the Wildlife Conservation Society to create a jaguar habitat model (Sanderson and Fisher 2011, pp. 1–11; 2013, entire), and the Conservation Breeding Specialist Group of the Species Survival Commission/International Union for Conservation of Nature to conduct a PVA and population habitat viability analysis (PHVA) for the jaguar. We anticipated that these analyses would assist us in determining those recovery actions that would be most effective for achieving a viable jaguar population for the Northwestern Recovery Unit (not the United States), as well as provide information relevant to determining critical habitat for the jaguar. However, the PHVA analysis and PVA themselves, while informative for recovery-planning purposes, did not contribute to the determination of critical habitat. Critical habitat for the jaguar focuses on the physical or biological features available in the United States that are essential to the conservation of the species; it is not

based on an overall number of jaguars, nor is it required to be, whereas the PVA and PHVA are used to determine a minimum viable population. The purpose of critical habitat for the jaguar is to provide areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit, which contributes to the overall recovery of the jaguar. Therefore, the Service relied on habitat features as described in the preliminary report entitled Digital Mapping in Support of Recovery Planning for the Northern Jaguar (Sanderson and Fisher 2011, pp. 1–11) for our August 20, 2012, proposed rule (77 FR 50214), and a later report entitled Jaguar Habitat Modeling and Database Update (Sanderson and Fisher 2013, entire) for our July 1, 2013, revised proposed rule (78 FR 39237) and this final rule. Please see the *Criteria Used to Identify Critical Habitat* section of the final rule and our response to comment number 1 in *Peer Reviewer Comments* above for further information about how we incorporated these reports into our determination.

(19) Comment: The Service should consider mountain lion (puma) literature where the data and research on jaguars is scant. Mountain lions, like jaguars, have an exceptionally large range that spans many degrees of latitude and longitude with different habitat types and are hypercarnivorous felid ambush predators that exhibit substantial diversity of diet and specific habitat relations, depending on the environment. The Service has the inherent authority and ability to use the best available science regarding connectivity for other similar species, such as the mountain lion, to make a reasoned judgment about the most likely areas that would facilitate connectivity for the jaguar. Consideration of mountain lions also argues against giving credence to Rabinowitz (1999) and Swank and Teer (1989).

Our response: The Service recognizes the overlap in the ecology of mountain lions and jaguars; however, we have based jaguar critical habitat on information compiled and produced by the Jaguar Recovery Team to the greatest extent possible. The Jaguar Recovery Team comprises jaguar experts, large-cat experts (knowledgeable about mountain lions), and stakeholders from the United States and Mexico; therefore, we consider that the work produced by the team is the best available scientific and commercial data, and that following the team's recommendations is the best avenue to designating critical habitat and conservation of the species.

(20) Comment: We received multiple comments concerning the characterization of prey abundance. Some noted that the Service should include actual estimates of prey density in the analysis so as to meet the best available data standard and to be consistent with treatment of other habitat factors. Others stated that it is impossible to characterize prey abundance in any temporally and spatially meaningful way. Rather, the relative permanent physical and ecological features that are important to jaguars and their prey (e.g., vegetation structure and composition, proximity to water, topography) are more useful for characterizing habitat.

Our response: We have relied on the best available scientific information on prey that is readily available from the Arizona Game and Fish Department (Hunt Arizona 2012 Edition, available at: *http://www.azgfd.gov/regs/HuntArizona2012.pdf*) and the New Mexico Department of Game and Fish (Harvest Information, available at: *http://www.wildlife.state.nm.us/recreation/hunting/*). Using this information, we have determined that white-tailed deer and javelina (the preferred prey of the jaguar in the northwestern-most part of its range) have been present in each critical habitat unit for at least 50 years in Arizona, and have been successfully hunted in each hunt unit overlapping jaguar critical habitat for the same period of time (Game Management Units 30A, 34A, 34B, 35A, 35B, 36A, 36B, and 36C). This information indicates that adequate levels of prey are currently available in critical habitat units in Arizona, and have been available for at least 50 years in these units.

Historical harvest information from New Mexico is not as readily available. However, based on the most recent harvest information, white-tailed deer and javelina are available in Unit 5 of jaguar critical habitat (Game Management Unit 27). White-tailed and mule deer and javelina are likely available in Unit 6 of jaguar critical habitat (Game Management Unit 26). We can determine that javelina have been successfully harvested in this Unit 6 (Game Management Unit 26), but this particular Game Management Unit lumps all deer together, so we are unable to distinguish hunt success between mule deer and white-tailed deer. This information indicates that adequate levels of prey are currently available in critical habitat units located in New Mexico.

(21) Comment: There has been no detailed prey occurrence or density study cited for the areas under consideration despite recognition that adequate prey is a major factor in assessing critical habitat.

Our response: See our response to comment number 20 in *Peer Reviewer Comments* above.

(22) Comment: The Service should consider that jaguar observations would likely be biased towards areas where there was more human activity together with greater visibility, specifically: nearer water sources, in less rugged areas, in areas with less forest or shrub cover, in areas with better access, and in areas with more human residences. This is not intrinsically problematic, but this precautionary bias should be recognized and explained.

Our response: We acknowledge that certain types of bias could be evident in jaguar observations due to their cryptic, nocturnal, and predatory nature. However, based on section 4(b)(1)(A) of the Act, the Secretary is required to make determinations on the basis of the best scientific and commercial data available.

(23) Comment: The Service should understand that just because under-use of habitat near human facilities has been demonstrated, it does not mean that individual animals will not use areas near people as a result of or in the process of losing their fear. As long as jaguars are not harassed or killed at a high rate around human facilities, there is a high likelihood that jaguars could heavily use otherwise suitable habitats near people, in areas where the HII is greater than 20.

Our response: We recognize that male jaguars have been documented near roads, but the data do not indicate that this is where the majority of jaguar sightings occur. Further, based on section 4(b)(1)(A) of the Act, the Secretary is required to make determinations on the basis of the best scientific and commercial data available. We have determined that the best scientific data available is that which has been compiled and produced by the Jaguar Recovery Team. Therefore, while we acknowledge that some jaguars may be able to use areas of a higher HII, for the purposes of critical habitat we are using the range of values recommended by the Jaguar Recovery Team in the northern portion of the proposed Northwestern Recovery Unit.

(24) Comment: The Service received multiple comments regarding the use of different habitat models for designating critical habitat corridors. Some recommended using specific models such as Beier *et al.* (2006) and

Rabinowitz and Zeller (2010). Others recommended using Pima County Wildlife Connectivity Assessment and Arizona's Wildlife Linkages Assessment. One recommended using a thesis by M. Rudy. Others recommended using features on the landscape such as rivers, streams, draws, washes, and wetlands. Others recommended using mountain lion data or other corridor data regarding corridor width.

Our response: In response to the various models recommended, we understand there are different approaches to modeling jaguar habitat than the method we used, each involving different methodologies, assumptions, and data layers. However, we believe that the information collected by the Jaguar Recovery Team and the latest habitat model the team produced (Sanderson and Fisher 2013, entire) is the best available scientific data, and is appropriate to inform critical habitat for the jaguar. Their methodology closely follows another jaguar habitat mapping effort conducted by Hatten *et al.* (2005, entire), and essentially involves determining the habitat features most relied upon by jaguars in the northwestern-most part of the species' range by overlaying spatial data layers representing these habitat features with observations of jaguars within this range (see the *Criteria Used to Identify Critical Habitat* section of the final rule for more detailed information). Additionally, by following the Sanderson and Fisher (2013) methodology, final critical habitat works alongside and supports the recovery-planning process in that the information used for both processes is compatible.

(25) Comment: The Service should connect critical habitat units in the United States because sufficient connectivity between critical habitat units within the United States is needed.

Our response: See our response to comment number 8 in *Peer Review Comments* above.

(26) Comment: The Service should connect critical habitat units in the United States because connectivity is needed to facilitate dispersal events, adaptation to changing environmental conditions, and genetic exchange.

Our response: As described in the final rule, the purpose of critical habitat is to provide areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in Mexico. We have determined that the designated areas are adequate for these purposes.

(27) Comment: The Service should connect critical habitat units in the United States because connectivity is needed to mitigate for border-related activities that may sever connectivity to Mexico.

Our response: All projects with a Federal nexus proposed within jaguar critical habitat in the United States will be evaluated on a case-by-case basis with respect to section 7 of the Act to ensure they do not destroy or adversely modify designated areas. Please see our response to comment number 8 *Peer Review Comments* above regarding connectivity of critical habitat.

(28) Comment: The Service should connect critical habitat units in the United States because connectivity is needed to support 50 to 100 jaguars in Arizona and New Mexico.

Our response: Please see our response to comment number 4 *Peer Review Comments* above.

(29) Comment: The Service has not explained the placement of Subunits 4b and 4c. In particular, the placement of 4b is not supported by the best scientific data, and the Service has not justified including this subunit and does not provide empirical data (data acquired by means of observation or experimentation).

Our response: Subunits 4b and 4c do not contain all of the PCEs, nor are they required to, as these subunits are considered unoccupied. Section 3 of the Act requires that the Service designate critical habitat in 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. Subunits 4b and 4c contain a combination of low human influence and either or both canopy cover and ruggedness such that they represent areas through which a jaguar may travel between the United States and Mexico. These critical habitat subunits provide connectivity between critical habitat units within the United States, and they provide connectivity between the United States and Mexico.

(30) Comment: The Service should include the least-cost corridor modeled by Rosemont Mine to replace Subunit 4b, as well as the elimination of Subunit 4b altogether because Subunit 4c provides a more direct route to Mexico from Subunit 4a.

Our response: In determining the most likely areas that would connect Subunit 4a to Mexico (by connecting to Unit 3), we again relied on data provided by the Jaguar Recovery Team, which we consider the best available scientific data. These subunits contain a combination of low human influence and either or both canopy cover and ruggedness such that they represent areas through which a jaguar may travel between Subunit 4a and Mexico. Either Subunit 4b or 4c may be used by a jaguar based on these habitat characteristics; therefore, we have no reason not to include these areas as critical habitat, regardless of which one provides a more direct connection to Mexico, as both subunits provide connectivity to Mexico through Unit 3.

(31) Comment: Future human impacts within Subunit 4c will render that subunit nonviable.

Our response: We understand that additional human impacts from future development on private or State lands could occur. However, critical habitat does afford protection to the jaguar through section 7 consultation under 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. 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. Therefore, actions that are funded, permitted, or carried out by a Federal agency within jaguar critical habitat will continue to be evaluated to determine their impacts on critical habitat.

(32) Comment: The single observation of a jaguar along the Santa Cruz River contains considerable information of relevance to identifying corridors, especially if framed in terms of prior knowledge of jaguar ecology elsewhere.

Our response: Please see our response to comment number 8 *Peer Review Comments* above regarding connectivity of critical habitat.

(33) Comment: The Service should consider that numerous scientific publications (some cited by the proposed rule) make the case for foreseeable warming and drying of the regions in question; which is to say that the hypotheses (models of the world) tacitly adopted by the proposed rule are not defensible in light of the best available scientific information. Additional numerous publications describe not only projected geospatial patterns of warming and drying based on regional general circulation models, but also projected geospatial changes in vegetation and plant species distributions for biomes and species that

contribute directly to the proposed rule's definition of essential jaguar habitat. It is plausible that portions of the United States could become crucial to persistence of jaguars due to climate change.

Our response: The Service considered numerous scientific information sources as cited in our proposed rule and this final rule. The Service recognizes that some species are shifting their geographic ranges, often moving poleward or upwards in elevation (National Fish, Wildlife, and Plants 2012, p. 10). Range shifts are not always negative: habitat loss in one area may be offset by an increase elsewhere such that if a species is able to disperse, it may face little long-term risk. However, it is clear that shifting distributions can lead to a number of new challenges (National Fish, Wildlife, and Plants 2012, p. 26). Changes in climate can have a variety of direct and indirect ecological impacts on species, and can exacerbate the effects of other threats. Climate-associated environmental changes to the landscape, such as decreased stream flows, increased water temperatures, reduced snowpack, and increased fire frequency, can affect species and their habitats. The vulnerability of a species to climate change impacts is a function of the species' sensitivity to those changes, its exposure to those changes, and its capacity to adapt to those changes. The Service acknowledges in the proposed rule and this final rule that climate change has the potential to adversely affect the jaguar within the next 50 to 100 years (Jaguar Recovery Team 2012, p. 32). However, the degree to which climate change will affect jaguar habitat in the United States is uncertain. Further, we do not know whether the changes that have already occurred have affected jaguar populations or distribution, nor can we predict how the species will adapt to or be affected by the type and degree of climate changes forecast. Consequently, because the specific impacts of climate change on jaguar habitats remains uncertain at this time, we did not recommend any areas be designated as critical habitat specifically to account for the negative effects of climate change.

(34) Comment: Clarify the exclusion of manmade features, specifically if a road runs through a wilderness area, would this entire area be excluded from critical habitat or just the road?

Our response: A road through a wilderness area would be excluded from critical habitat because it does not contain the physical or biological features essential to the jaguar's conservation. Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas), and the land on which they are located, existing within the legal boundaries on the effective date of this rule. However, the presence of a road does not exclude an area of 100 km^2 that contains all the PCEs from being designated as critical habitat. Areas in which the HII calculated over 1 km^2 (0.4 mi^2) is 20 or less are considered an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States.

(35) Comment: Clarify what expansive open space is.

Our response: Expansive open spaces in the southwestern United States is defined as areas of at least 100 km^2 (32 to 38.6 mi^2) in size which: (1) Provide connectivity to Mexico; (2) contain adequate levels of native prey species, including deer and javelina, as well as medium-sized prey such as coatis, skunks, raccoons, or jackrabbits; (3) include surface water sources available within 20 km (12.4 mi) of each other; (4) contain from greater than 1 to 50 percent canopy cover within Madrean evergreen woodland, generally recognized by a mixture of oak (*Quercus* spp.), juniper (*Juniperus* spp.), and pine (*Pinus* spp.) trees on the landscape, or semidesert grassland vegetation communities, usually characterized by *Pleuraphis mutica* (tobosagrass) or *Bouteloua eriopoda* (black grama) along with other grasses; (5) are characterized by intermediately, moderately, or highly rugged terrain; (6) are below 2,000 m (6,562 feet) in elevation; and (7) are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-km^2 (0.4-mi^2) area.

(36) Comment: Clarify habitat-related terminology (i.e., habitat, suitable habitat, high-quality habitat, essential habitat, and critical habitat), especially the relations of one term to another, and maintain its use throughout.

Our response: The terms suitable habitat, high-quality habitat, and essential habitat are not used in the final rule. Critical habitat is defined within the proposed rule and this final rule.

Comments From States

(37) Comment: There is no habitat in the United States that is critical to the recovery of the jaguar or its survival as a species.

Our response: See our response to comment number 1 in *Peer Reviewer Comments* above.

(38) Comment: Jaguar critical habitat in the United States is not essential because jaguars have persisted in the Northern Recovery Unit for the last 50 years with no evidence of breeding in the United States during that time.

Our response: Evidence of breeding is not required for an area to be designated as critical habitat. See our response to comment number 11 in *Peer Reviewer Comments* above.

(39) Comment: Designation of critical habitat is not due to new data but due to litigation. The Service's previous 1997 and 2006 not-prudent determinations for designating critical habitat for the jaguar were valid decisions, but the 2010 prudent determination to designate critical habitat for the jaguar is not valid. The court did not order the Service to designate critical habitat, but rather to determine if the physical and biological features upon which jaguars depend could be found in the United States and, if so, were essential to the conservation of the species.

Our response: The Service has identified critical habitat for the jaguar in accordance with the Act and its implementing regulations. The Service has determined that designation of critical habitat for the jaguar is prudent and determinable based on the best scientific data available. Section 4(a)(3)(A) of the Act states that critical habitat shall be designated for endangered and threatened species to the maximum extent prudent and determinable. Therefore, we are required to designate critical habitat for the jaguar to fulfill our legal and statutory obligations. See our responses to comment numbers 1 and 2 in *Peer Review Comments* above.

(40) Comment: There are no physical or biological features to support jaguars, and, therefore, there is no jaguar habitat in New Mexico.

Our response: We have determined that the physical or biological feature for jaguar critical habitat and the associated PCEs are present in the United States, including New Mexico. To the greatest extent possible, we have based jaguar critical habitat on information compiled and produced by the Jaguar Recovery Team. The Jaguar Recovery Team comprises jaguar experts, large-cat experts, and stakeholders from the United States and Mexico; therefore, we consider that the work produced by the team is the best available scientific and commercial data, and that following the team's recommendations is the best avenue to designating critical habitat and conservation of the species.

(41) Comment: Habitat in New Mexico and Arizona is marginal for the jaguar; therefore, it is not essential.

Our response: Section 3(5)(A) of the Act defines critical habitat as the

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. As described in the final rule, the recovery function and value of critical habitat for the jaguar within the United States is to contribute to the species' persistence and, therefore, overall conservation by providing areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit. The Northwestern Recovery Unit is essential for the conservation of the species; therefore, areas within New Mexico containing the physical and biological feature and associated PCEs are essential to the jaguar.

(42) Comment: The Service did not use the correct listing time period to determine occupancy. The commenter is concerned that the Service used data from 1982 to the present.

Our response: The Service's designation of occupied critical habitat is in compliance with the Act. Determining jaguar occupancy at the time of listing is particularly difficult given that: (1) Jaguars were rare on the landscape in the United States at the time of listing, making those individuals that may have been present more difficult to detect; (2) jaguars require expansive open spaces for each individual, thus reducing the likelihood of detecting them; (3) jaguars are highly mobile and inhabit rugged, remote areas, thus we cannot be sure that a lack of detection indicates that the species is absent; and (4) no effort was made to detect jaguars in the United States from 1972 to 1997. As discussed in the proposed rule and this final rule, our intention was to list the species throughout its entire range at the time it was added to the Endangered Species Conservation Act in 1972; therefore, we determine that 1972 is the date the species was listed. We are including areas in which reports of jaguar exist during the 10 years prior to its listing as occupied at the time of listing, meaning we are considering records back to 1962. Our rationale for including these records is based on expert opinion regarding the average lifespan of the jaguar, the consensus being 10 years. Therefore, we assume that areas that would have been considered occupied at the time of listing would have included sightings 10 years prior to its listing, as presumably these areas were still inhabited by jaguars when the species was listed in 1972. Based on the best available information related to jaguar rarity, biology, and survey effort, we determine that areas containing undisputed Class I records from 1962 (10 years prior to listing, which is the average lifespan of a jaguar) to the present (September 11, 2013) may have been occupied by jaguars at the time of listing.

The second part of the Act's definition of critical habitat is defined as specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. For these reasons, we also analyzed whether or not critical habitat areas are essential to the conservation of the species. To the extent that uncertainty exists regarding our analysis of these data, we acknowledge there is an alternative explanation as to whether or not these areas were occupied at the time the jaguar was listed in 1972 (37 FR 6476, March 30, 1972). The lack of jaguar sightings at that time, as well as some expert opinions cited in our July 22, 1997, clarifying rule (62 FR 39147) (for example, Swank and Teer 1989), suggest that jaguars in the United States had declined to such an extent by that point as to be effectively eliminated. Therefore, an argument could be made that no areas in the United States were occupied by the species at the time it was listed, or that only areas containing undisputed Class I records from between 1962 and 1982 were occupied. For this reason, we also analyzed whether or not these areas are essential to the conservation of the species. Through our analysis, we determine that they are essential to the conservation of the species for the following reasons: (1) They have demonstrated recent (since 1996) occupancy by jaguars; (2) they contain features that comprise jaguar habitat; and (3) they contribute to the species' persistence in the United States by allowing the normal demographic function and possible range expansion of the Northwestern Recovery Unit, which is essential to the conservation of the species (as discussed in the *Jaguar Recovery Planning in Relation to Critical Habitat* section, above). Therefore, whether or not they were occupied at the time of listing, we are designating those areas as critical habitat.

(43) Comment: The revised proposed rule is based on highly inaccurate and notoriously unreliable jaguar records rather than the Class I records standard that the Service established.

Our response: In determining areas that may be occupied by jaguars, we used undisputed Class I records from 1962 through September 11, 2013. We understand that some of the jaguar records used in our proposed rule may be disputed due to the possibility that female scat was used as a scent lure in some areas. Therefore, we removed all sightings that may have been influenced by female scat, which we determined to be from October 3, 2008 (the date of Emil McCain's request for jaguar scat from the Phoenix Zoo) through March 2, 2009 (the date Macho B was captured and flown to the Phoenix Zoo). See ''Class I Records'' section above and Table 1 above of this final rule for all of the undisputed Class I jaguar records used to determine occupancy.

In determining the physical and or biological features essential to the jaguar in the northwestern most part of its range, we relied on information compiled and produced by the Jaguar Recovery Team, which we consider the best available science. Our August 20, 2012 (77 FR 50214), proposed critical habitat designation was based on a preliminary report from the Jaguar Recovery Team entitled Digital Mapping in Support of Recovery Planning for the Northern Jaguar (Sanderson and Fisher 2011, pp. 1–11), which described a model for mapping jaguar habitat in the northwestern-most part of the species range. This 2011 report relied on 333 records of mapped jaguar observations across habitat variables to determine a categorization of the variables and selection of categories to include in the model.

These 333 records included cultural evidence of jaguars (such as a jaguar painting in a cave or a place name including the word jaguar), sightings of live animals or their sign, mortalities (such as hunting events or jaguars killed after a predation event), and observations of possible jaguars (such as a cat, spotted cat, or large quadruped (four-footed animal)). This means that these records included Class I (observations with physical evidence for verification, such as a skin, skull, or photo), Class II (observations with detailed information but no physical evidence, such as a first-hand report from a qualified individual), and Class III (all other observations, such as second- or third-hand reports of a jaguar) sightings. We refined this model further for proposed critical habitat in the United States by analyzing the same habitat variables, but we used only undisputed Class I jaguar observations in the United States from 1962 to mid-2012 (which, at that time, was 130 observations). This resulted in slightly

different ranges of habitat variables in some cases (specifically for canopy cover and the Human Influence Index) for proposed critical habitat than the range of habitat variables described in the 2011 habitat modeling report (Sanderson and Fisher 2011, pp. 1–11).

Since the publication of the proposed rule, the Jaguar Recovery Team continued to refine the jaguar habitat model. By including jaguar observations in addition to the 333 used in the preliminary 2011 report (described in Sanderson and Fisher 2013, pp. 3 and 7), developing a method to avoid pseudo-replication (many locations of the same animal in close proximity in time and in space) from camera trap and radiotelemetry studies (Sanderson and Fisher 2013, p. 3), and applying criteria and filters to the jaguar observation database to further refine the habitat variables included in the model (Sanderson and Fisher 2013, pp. 3–5 and Appendix 2; note that this resulted in splitting the proposed Northwestern Recovery Unit into northern and southern portions, each with a different range selected for some habitat variables (Sanderson and Fisher 2013, pp. 7 and 20)). This resulted in an updated habitat model, which was included in a final report we received in March 2013, entitled Jaguar Habitat Modeling and Database Update (Sanderson and Fisher 2013, entire).

In the updated jaguar habitat model, Sanderson and Fisher (2013, pp. 3–5 and Appendix 2) utilized all jaguar observations for which the description of the location was sufficient to place it with certainty within 10 km (6.2 mi) of its actual location, and for which a date to the nearest century was available. This resulted in 453 observations (note that the 452 included in Table 1.3 of Sanderson and Fisher (2013, p. 13) is incorrect) for inclusion in the updated model including Class I, II, and III sightings, but removed any sightings recorded as cat, spotted cat, or large quadruped (four-footed animal), as well as locations that were described too generally to accurately locate on a map (e.g., southern Arizona). The reason for selecting these observations to use in the habitat model was because the Jaguar Recovery Team came to the consensus this was appropriate after analyzing these jaguar observations through three different evidence filters: (1) Physical evidence only (photograph or video, skull, hide, or carcass measured; the equivalent of a very strict interpretation of Class I records), (2) physical and sign evidence (similar to the previous, but also including tracks, jaguar kills, and other physical evidence; the equivalent of Class I records), and (3) all evidence types (similar to the previous, but also including first, second, and third-hand reports of jaguars, cultural artifacts, stories, and representations of jaguars, and other types of evidence; the equivalent of Class I, II, and III records; see Table 1.4 of Sanderson and Fisher (2013, p. 14) for a complete list of evidence types). Using these filters, Sanderson and Fisher (2013, pp. 3–5 and Appendix 2) analyzed the frequency that these 453 jaguar observations occurred across the range of habitat variables used in the model.

Upon viewing this analysis, the Jaguar Recovery Team determined that the overall pattern of frequencies of these observations relative to the habitat variables were similar, meaning that regardless of the type of evidence used (physical evidence only, physical and sign evidence, or all evidence), jaguar observations in relation to the habitat variables occurred with the same frequency. The Jaguar Recovery Team hypothesized that this is because jaguars are habitat generalists, with jaguar habitat generally defined as cover, prey, and limited human persecution within the proposed Northwestern Recovery Unit. The Jaguar Recovery Team, therefore, decided to use all types of evidence, because that resulted in the largest number of observations (453; note that the 452 included in Table 1.3 of Sanderson and Fisher (2013, p. 13) is incorrect) for inclusion in the updated model.

To further analyze the frequency of jaguar observations relative to habitat variables, the Service analyzed a subset of recent, highly accurate jaguar locations from Mexico and the United States to determine if filtering the observations in this way would influence the frequency that these observations occurred across the range of habitat variables. From the 453 observations used in the updated habitat model (Sanderson and Fisher 2013, entire), we selected records that met the following criteria: (1) They were part of a scientific study (and therefore utilized Global Positioning System (GPS) or radiotelemetry receivers); (2) they were not disputed due to the possible use of scent lure; and (3) they were from May 2000 forward (the time that public GPS receivers became more accurate because the intentional degradation of public GPS signals implemented for national security reasons was discontinued; see *http://www.gps.gov/systems/gps/modernization/sa/for more information*). Additionally, the same criteria to avoid pseudo-replication (Sanderson and Fisher 2013, p. 3) were applied to this subset of data. This resulted in 333 observations, 44 of which are located in the United States (note that the reason the number of observations in the United States in this dataset is less than the number of observations used to determine critical habitat in our proposed rule is because of the methods the Jaguar Recovery Team developed to avoid pseudo-replication from camera trap and radiotelemetry studies; these methods were not applied to the dataset we used for our August 20, 2012, proposed rule). We also separated jaguar records from north to south in the same manner that Sanderson and Fisher (2013, p. 20) did for the tree cover and HII habitat variables.

The results of our additional analysis indicate that the overall pattern in frequency of jaguar observations using these highly accurate locations relative to the habitat variables is similar to the patterns observed using the entire data set used for the updated habitat model (Sanderson and Fisher 2013, entire). For example, 95 percent of these highly accurate locations are found in greater than 1 to 50 percent tree cover (for all jaguar observations except those in the southernmost part of the proposed Northwestern Recovery Unit); 97 percent correspond to a HII of less than 20 (for all jaguar observations except those in the southernmost part of the proposed Northwestern Recovery Unit); 99 percent are within 10 km (6.2 mi) of water; 75 percent are in intermediately, moderately, or highly rugged terrain; and 98 percent are found at less than 2,000 m (6,562 ft) in elevation. Therefore, for the reasons stated above, we determine that the Sanderson and Fisher (2013, entire) updated habitat model is not unreliable because it incorporates jaguar observations for which there is no physical evidence, and that the information from the Jaguar Recovery Team is the best available science regarding the habitat characteristics that are essential to the jaguar in the northwestern-most part of its range.

In the revised proposed rule and this final rule, we did not further refine the updated habitat model by using only Class I jaguar locations specific to the United States like we did in our analysis for the proposed rule, because we determined that the ranges of habitat variables selected by the Jaguar Recovery Team in the northern part of the proposed Northwestern Recovery Unit adequately represent available habitat for jaguars in the United States. We used the same data layers and ranges of habitat variables as used in the updated jaguar habitat model (Sanderson and Fisher 2013, entire) to

determine the PCEs of jaguar critical habitat in the United States. However, in two cases we substituted data layers for variables for which more detailed, higher-resolution data were available for the United States: (1) For water sources we substituted the United States Geological Services (USGS) National Hydrography Dataset (NHD) (available at *http://nhd.usgs.gov/data.html*) for USGS HydroSHEDS, and (2) for vegetation communities we substituted Brown and Lowe (1980) Biotic Communities of the Southwest (available at *http://azconservation.org/downloads/biotic_communities_of_the_southwest_gis_data*) for World Wildlife Fund Ecoregions (note that the World Wildlife Fund Ecoregions habitat type representing the Sky Islands region in the Jaguar Recovery Team updated model was Sierra Madre Occidental pine-oak forests, for which we substituted the classifications of Madrean evergreen woodland and semidesert grassland from Biotic Communities of the Southwest to represent the Sky Islands region). The other data sources in the updated model include: (1) MODerate-resolution Imaging Spectroradiometer (MODIS) Tree cover for canopy cover (continuous field data) (available at *http://glcf.umd.edu/data/vcf/*); (2) Advanced Spaceborne Thermal Emission and Reflection Radiometer (ASTER DEM) for ruggedness and elevation (available at *https://wist.echo.nasa.gov*); and (3) Human Influence Index (HII) for human influence (available at *http://sedac.ciesin.columbia.edu/wildareas/*) (to exclude cities, agricultural and developed rural areas). Sanderson and Fisher (2013, entire) did not use a data layer for prey, nor did we. See our response to comment number 20 in *Peer Reviewers Comments.* See the *Criteria Used to Identify Critical Habitat* section of the final rule for more information. In summary, we used only Class I undisputed sightings to define the occupied area, but after the sensitivity analysis described above we determined it was acceptable to use the habitat analysis based on a larger category of sightings.

(44) Comment: There is no long-term presence, sustained use, or reproduction of jaguars in the United States.

Our response: The Act does not require a breeding or reproducing population of jaguars, long-term presence of jaguars, or sustained use by jaguars for the purposes of designating critical habitat. See our response to comment number 11 in the *Peer Reviewer Comments* above.

(45) Comment: The Service states in the proposed rule that they designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. The area currently occupied by the jaguar outside the United States is adequate for the conservation of the jaguar.

Our response: See our response to comment number 1 in *Peer Reviewers Comments* above.

(46) Comment: The Service's critical habitat analysis and designation are scientifically invalid and incomplete in nature. Without an adequate, quantitative, science-based understanding of all components of jaguar habitat requirements, critical habitat cannot and should not be designated. The data are insufficient to understand jaguar habitat.

Our response: See our response to comment number 16 in *Peer Review Comments* above.

(47) Comment: The Service has accurately described habitat, but it does not mean these areas are essential.

Our response: The Service has designated critical habitat in compliance with the Act. Section 3(5)(A) states that the Service shall designate geographic areas occupied by the species at the time it was listed if they contain physical or biological features, which are essential to the conservation of the species, and 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. In the proposed rule and this final rule we have determined that areas in the United States occupied by the species at the time it was listed contain the physical or biological feature for jaguar critical habitat and the associated PCEs are present. We identify connectivity between expansive open spaces in the United States and Mexico as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States. Providing connectivity from the United States to Mexico is a key element to maintaining those processes. The ability for jaguars in the proposed Northwestern Recovery Unit to utilize physical and biological habitat features in the borderlands region is ecologically important to the recovery of the species; therefore, maintaining connectivity to Mexico is essential to the conservation of the jaguar. Consequently, we have also determined that areas in the United States outside the geographical area that may be occupied by the species at the time it is listed are essential to the conservation of the jaguar by providing connectivity to Mexico (PCE 1) in areas containing low human influence and impact, and either or both vegetative cover or rugged terrain. It is our intent that the designation of critical habitat will protect the functional integrity of the features essential for jaguar life-history requirements for this purpose into the future.

(48) Comment: There are no PCEs in Arizona.

Our response: The best available scientific data indicates PCEs are present in Arizona. To the greatest extent possible, we have based jaguar critical habitat on information compiled and produced by the Jaguar Recovery Team. The Jaguar Recovery Team comprises jaguar experts, large-cat experts, and stakeholders from the United States and Mexico; therefore, we consider that the work produced by the team is the best available scientific and commercial data, and that following the team's recommendations is the best avenue to conservation of the species and by extension designating critical habitat. We have determined that the essential physical or biological feature for jaguar critical habitat and the associated PCEs are present in the United States, and that these areas contribute to the species' persistence and, therefore, overall conservation by providing areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit.

(49) Comment: The Arizona Game and Fish Department's Jaguar Conservation Assessment is the best science.

Our response: The Arizona Game and Fish Department's Jaguar Conservation Assessment provides valuable information regarding the status of the jaguar in Arizona, New Mexico, and northern Mexico. The Service considered and utilized this information in this final rule. See Johnson *et al.* (2011) as referenced in the final rule.

(50) Comment: The Service did not use the best available science because we utilized McCain and Childs (2008), in which female scat was used as scent lure.

Our response: The Service used the best available science to determine critical habitat for the jaguar. We understand that some of the jaguar records used in our proposed rule may be disputed due to the possibility that female scat was used as a scent lure in some areas. Therefore, we removed all sightings that may have been influenced

by female scat, which we determined to be from October 3, 2008 (the date of Emil McCain's request for jaguar scat from the Phoenix Zoo) through March 2, 2009 (the date Macho B was captured and flown to the Phoenix Zoo). See our response to comment number 43 in *Comments from States* above.

(51) Comment: The designation of critical habitat is because the Service is trying to avoid further litigation.

Our response: See our response to comment numbers 1 and 2 in the *Peer Reviewer Comments* above.

(52) Comment: The Service should not designate critical habitat because a PVA demonstrates that establishing a population of jaguars in the United States would destabilize populations in Sonora.

Our response: We disagree that designating critical habitat will destabilize the nearest breeding population in Mexico, and we disagree that habitat in the United States is a population sink. The purpose of designating critical habitat in the United States is not to create a self-sustaining, breeding population north of the U.S.-Mexico border, but to provide small patches of habitat (perhaps in some cases with a few resident jaguars) to allow for the cyclical expansion and contraction of the nearest core area in Mexico. See our response to comment number 18 in the *Peer Reviewer Comments* above.

(53) Comment: Given the heavy reliance that the Service places on the results of PVA models such as those presented by Miller (2013) to support the designation of critical habitat, we request that the data and complete modeling information be provided to the public such that the assumptions and specifics of these analyses can be properly and transparently analyzed.

Our response: The Service did not use the PVA to designate critical habitat for the jaguar. The Service originally planned to use the PVA in designating critical habitat for the jaguar; however, we realized that the habitat models (Sanderson and Fisher 2011, pp. 1–11; 2013, entire) created for the PHVA and PVA processes were the components that could best inform critical habitat for the jaguar in the United States. During the development of the Recovery Outline and as a part of the recovery planning process, the Jaguar Recovery Team worked with the Wildlife Conservation Society to create a jaguar habitat model (Sanderson and Fisher 2011, pp. 1–11; 2013, entire), and the Conservation Breeding Specialist Group of the Species Survival Commission/International Union for Conservation of Nature to conduct a PVA and PHVA for the jaguar. We anticipated that these analyses would assist us in determining those recovery actions that would be most effective for achieving a viable jaguar population for the Northwestern Recovery Unit (not the United States), as well as provide information relevant to determining critical habitat for the jaguar. In both analyses, the focus was on the habitat and jaguar population in the Northwestern Recovery Unit. However, the PHVA and PVA themselves, while informative for recovery-planning purposes, did not contribute to the determination of critical habitat.

Critical habitat for the jaguar focuses on the physical or biological features available in the United States that are essential to the conservation of the species; it is not based on an overall number of jaguars, nor is it required to be, whereas the PVA is used to determine a minimum viable population. The purpose of critical habitat for the jaguar is to provide areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit, which contributes to the overall recovery of the jaguar. Therefore, the Service relied on habitat features as described in the preliminary report entitled Digital Mapping in Support of Recovery Planning for the Northern Jaguar (Sanderson and Fisher 2011, pp. 1–11) for our August 20, 2012, proposed rule (77 FR 50214), and a later report entitled Jaguar Habitat Modeling and Database Update (Sanderson and Fisher 2013, entire) for our July 1, 2013, revised proposed rule (78 FR 39237) and this final rule. Please see the *Criteria Used to Identify Critical Habitat* section of the final rule above and our response to comment number 18 in the *Peer Reviewer Comments* above for further information about how we incorporated these reports into our determination.

(54) Comment: The Service should not use the PVA (Miller 2013) because it relies on dubious data produced by McCain and Childs and other undisclosed data, the data has undergone 13 iterations of analysis, it is fatally flawed by substitution of untested hypotheses for data, the authors never cited any study of the prey base of the jaguar, it does not provide the necessary details to replicate the results of Miller (2013), it contradicts the treatment of parameter assumptions by the Service, it lacks sensitivity analyses to inform the consequences of model assumptions, and natural and human-caused catastrophes are not included. Miller (2013) inappropriately interprets the results of its reported PVA models, and the Service has implicitly accepted the assumptions of Miller (2013) that dispersal costs and drought have no effect on jaguar populations.

Our response: See our response to comment number 53 in *Comments from States* above.

(55) Comment: Jaguar habitat cannot be determined without a full understanding of the jaguar's prey requirements and the availability of prey species within a habitat location to meet those requirements.

Our response: See our response to comment number 20 in the *Peer Reviewer Comments* above.

(56) Comment: The Service did not use data regarding the distribution of native prey in designating critical habitat. The Service has not presented and has refused to consider any relevant scientific data regarding the prey component of habitat for the jaguar within the proposed critical habitat boundaries.

Our response: We have relied on the best available scientific information that is readily available from the Arizona Game and Fish Department (Hunt Arizona 2012 Edition, available at: *http://www.azgfd.gov/regs/HuntArizona2012.pdf*) and the New Mexico Department of Game and Fish (Harvest Information, available at: *http://www.wildlife.state.nm.us/recreation/hunting/*). The Service did not receive additional data on prey abundance sufficient to include in critical habitat modeling efforts during any of the three comment periods. See our response to comment number 20 in the *Peer Reviewer Comments* above.

(57) Comment: Without an adequate, quantitative, science-based understanding of year-round water availability, critical habitat should not be designated.

Our response: We have determined that waters within 20 km (12.4 mi) of each other are available within the designated critical habitat. We consider the best available information for water sources in the United States as that produced by the USGS through their National Hydrography Dataset (NHD) (see our response to comment number 43 for a Web site link to the GIS data layer). For water sources, Sanderson and Fisher (2013, p. 6) utilized USGS HydroSHEDS in their updated model because this data layer covers both the United States and Mexico. In our modeling analysis, we substituted the USGS NHD because this data layer

provides higher-resolution data within the United States. The USGS NHD data layer indicates that there are no areas within critical habitat lacking waters within 20 km (12.4 mi) of each other. We understand that the availability of water across the landscape during the year is variable. Regardless, according to the best available scientific data, it appears that there is sufficient water available for jaguars within the final critical habitat designation.

(58) Comment: The Service fails to account for ecological changes as the result of climate change or climate-based factors that would eliminate proposed habitat. If the predicted climate change for the Southwest is hotter and drier, then the designated critical habitat would not have the capability to support jaguars; therefore, the Service should not designate critical habitat.

Our response: The Service recognizes that some models predict dramatic changes in Southwestern vegetation communities as a result of climate change (Weiss and Overpeck 2005, p. 2074; Archer and Predick 2008, p. 24) and the projections presented for the Southwest predict warmer, drier, and more drought-like conditions (Hoerling and Eischeid 2007, p. 19; Seager *et al.* 2007, p. 1181). Further, the Service acknowledges in the proposed rule and this final rule that climate change has the potential to adversely affect the jaguar within the next 50 to 100 years (Jaguar Recovery Team 2012, p. 32). The Service recognizes in the proposed rule and this final rule that the impact of future drought, which may be long-term and severe (Seager *et al.* 2007, pp. 1183–1184; Archer and Predick 2008, entire), may affect jaguar habitat in the U.S.-Mexico borderlands area, but the information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. We do not know whether the changes that have already occurred have affected jaguar populations or distribution, nor can we predict how the species will adapt to or be affected by the type and degree of climate changes forecast. Consequently, because the specific impacts of climate change on jaguar habitats remains uncertain at this time, we did not recommend any areas be designated as critical habitat or not be designated as critical habitat specifically to account for the negative effects of climate change.

(59) Comment: The Service should not consider climate change models because they cannot be downscaled to the level of the jaguar critical habitat.

Our response: The Service recognizes that the current climate change models are not downscaled to a local level. Projections of climate change globally and for broad regions through the 21st century are based on the results of modeling efforts using state-of-the-art Atmosphere-Ocean General Circulation Models and various greenhouse gas emissions scenarios (Meehl *et al.* 2007, p. 753; Randall *et al.* 2007, pp. 596–599). As is the case with all models, uncertainty is associated with the projections due to assumptions used and other features of the models. However, despite differences in assumptions and other parameters used in climate change models, the overall surface air temperature trajectory is one of increased warming in comparison to current conditions (Meehl *et al.* 2007, p. 762; Prinn *et al.* 2011, p. 527). Among the IPCC's projections for the 21st century are the following: (1) Warmer and more frequent hot days and nights over most of the earth's land areas are virtually certain; (2) increased frequency of warm spells and heat waves over most land areas is very likely, and the frequency of heavy precipitation events will increase over most areas; and (3) increases will likely occur in the incidence of extreme high sea level (excludes tsunamis), intense tropical cyclone activity, and the area affected by droughts in various regions of the world (IPCC 2007b, p. 8).

Climate simulations of the Palmer Drought Severity Index (a calculation of the cumulative effects of precipitation and temperature on surface moisture balance) for the Southwest for the periods of 2006 to 2030 and 2035 to 2060 show an increase in drought severity with surface warming. Additionally, drought still increases even during wetter simulations because of the effect of heat-related moisture loss through evaporation and evapotranspiration (Hoerling and Eischeid 2007, p. 19). Annual mean precipitation is likely to decrease in the Southwest, as is the length of snow season and snow depth (IPCC 2007b, p. 887). Most models project a widespread decrease in snow depth in the Rocky Mountains and earlier snowmelt (IPCC 2007b, p. 891). The Service will continue to follow and assess the science behind climate change and update our summaries as new information is published.

(60) Comment: There are no areas requiring special management.

Our response: Section 3(5)(A)(i) of the Act states that the physical and biological features essential to the conservation of the species ''may'' require special management considerations or protections. The Act does not state that those features must require such management or protection. Nonetheless, special management considerations of the physical and biological feature essential to the conservation of the jaguar may be needed to alleviate the effects on jaguar habitat of road, power line, and pipeline projects; human developments; mining operations; and ground-based military activities. Future projects should avoid (to the maximum extent possible) areas identified as meeting the definition of critical habitat for jaguars, and if unavoidable, should be constructed or carried out to minimize habitat effects.

(61) Comment: The designation of jaguar critical habitat will limit game management activities and recreational activities, such as hunting, and litigation will be used to impact game activities.

Our response: 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.

In our economic analysis we considered all of the potential additional conservation efforts or restrictions that could occur as the result of the addition of critical habitat. We found the incremental effects of the critical habitat designation to be relatively minor, as additional measures beyond those already in place are unlikely. We found that the designation of critical habitat for the jaguar would not have direct impacts on the environment as designation is not expected to impose land use restrictions or prohibit land use activities.

Further, the species is already present in the United States. We are not proposing to reintroduce or supplement the existing jaguars in the United States. The designation of critical habitat does not translate into an increase of jaguars in the United States. As discussed in the proposed rule and this final rule, the purpose of designating critical habitat in the United States is to provide areas for transient jaguars (with possibly a few residents) to support the nearest breeding area to the south in Mexico, allowing this population to expand and contract, and, ultimately, recover. It is our intent that the designation of critical habitat will protect the functional integrity of the features essential for jaguar life-history requirements for this purpose into the future.

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. Any of these or other actions on Federal lands that may affect the jaguar or its designated critical habitat would be required to consult with the Service to ensure those actions are not adversely modifying its critical habitat. However, consultation is already required in occupied areas because the jaguar is listed as an endangered species. All projects with a Federal nexus proposed within jaguar critical habitat in the United States will be evaluated on a case-by-case basis with respect to section 7 of the Act.

(62) Comment: The Service should provide maps delineating the PCEs.

Our response: The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0042 and at the Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Enhanced color maps and site-specific boundaries of the critical habitat in both GIS and Google Earth format can be viewed and downloaded from *http://www.fws.gov/southwest/es/arizona.*

(63) Comment: The Service did not provide the data or sources used in the habitat model.

Our response: As stated in the proposed rule and this final rule below are the PCEs and data sources. PCE 1: Provide connectivity to Mexico—If an occupied area was not connected to Mexico, we selected and added areas containing low human influence and impact (PCE 7) and either or both vegetative cover (PCE 4) or rugged terrain (PCE 5) to connect these areas directly to Mexico or to another occupied area providing connectivity to Mexico. Below are the data sources and Web site links to all the GIS data layers that we used in evaluating PCEs in this final rule.

PCE 2: Contain adequate levels of native prey species, including deer and javelina, as well as medium-sized prey such as coatis, skunks, raccoons, or jackrabbits—Comprehensive, consistent data regarding prey distribution across Arizona and New Mexico is lacking. Therefore, we relied on the best information that is readily available from the Arizona Game and Fish Department (Hunt Arizona 2012 Edition, available at: *http://www.azgfd.gov/regs/HuntArizona2012.pdf*) and the New Mexico Department of Game and Fish (Harvest Information, available at: *http://www.wildlife.state.nm.us/recreation/hunting/*). Using this information, we determined that white-tailed deer and javelina (the preferred prey of the jaguar in the northwesternmost part of its range) have been present in each critical habitat unit (described in Final Critical Habitat Designation, above) for at least 50 years in Arizona, and have been successfully hunted in each hunt unit overlapping jaguar critical habitat for the same period of time (Game Management Units 30A, 34A, 34B, 35A, 35B, 36A, 36B, and 36C). Historical harvest information from New Mexico is not as readily available; however, based on the most recent harvest information, white-tailed deer and javelina are available in Unit 5 of jaguar critical habitat (Game Management Unit 27), and are likely available in Unit 6 (both described in Final Critical Habitat Designation, above) of jaguar critical habitat (Game Management Unit 26; we can determine that javelina have been successfully harvested in this Game Management Unit, but this particular unit lumps all deer together, so we are unable to distinguish hunt success between mule deer and white-tailed deer). Therefore, while we were unable to map prey distribution within Arizona and New Mexico, we believe adequate levels of prey are available, and have been available for at least 50 years in Arizona.

PCE 3: Include surface water sources available within 20 km (12.4 mi) of each other—For water sources we substituted the USGS National Hydrography Dataset (NHD) (available at *http://nhd.usgs.gov/data.html*) for the HydroSHEDS data layer used in the jaguar habitat model developed by the Jaguar Recovery Team (Sanderson and Fisher 2013, Table 1, p. 6).

PCE 4: Contain from greater than 1 to 50 percent canopy cover within Madrean evergreen woodland, generally recognized by a mixture of oak, juniper, and pine trees on the landscape, or semidesert grassland vegetation communities, usually characterized by *Pleuraphis mutica* (tobosagrass) or *Bouteloua eriopoda* (black grama) along with other grasses—For canopy cover we used the same data layer as used in the jaguar habitat model developed by the Jaguar Recovery Team (Sanderson and Fisher 2013, Table 1, p. 6), called MODerate-resolution Imaging Spectroradiometer (MODIS) Tree cover (continuous field data; available at *http://glcf.umd.edu/data/vcf/*). For vegetation communities we substituted Brown and Lowe (1980) Biotic Communities of the Southwest (available at *http://azconservation.org/downloads/biotic_communities_of_the_southwest_gis_data*) for the World Wildlife Fund Ecoregions data layer used in the jaguar habitat model developed by the Jaguar Recovery Team (Sanderson and Fisher 2013, Table 1, p. 6).

PCE 5: Are characterized by intermediately, moderately, or highly rugged terrain—For terrain ruggedness we used the same data layer as used in the jaguar habitat model developed by the Jaguar Recovery Team (Sanderson and Fisher 2013, Table 1, p. 6), called Advanced Spaceborne Thermal Emission and Reflection Radiometer Digital Elevation Model (ASTER DEM) (available at *https://lpdaac.usgs.gov/products/*) and followed the methodology described in Hatten *et al.* (2005, p. 1026).

PCE 6: Are below 2,000 m (6,562 feet) in elevation—For elevation we used the Advanced Spaceborne Thermal Emission and Reflection Radiometer Digital Elevation Model (ASTER DEM) data layer (available at *https://lpdaac.usgs.gov/products/*), which is a standard digital layer used to describe elevation.

PCE 7: Are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1 km^2 (0.4 mi^2) area—For human influence (to exclude cities, agricultural, and developed rural areas) we used the same data layer as used in the jaguar habitat model developed by the Jaguar Recovery Team (Sanderson and Fisher 2013, Table 1, p. 6), called the HII (available at *http://sedac.ciesin.columbia.edu/wildareas/*).

(64) Comment: Arizona and New Mexico should be withdrawn or excluded from critical habitat because the distribution of the jaguar within the United States represents less than 1 percent of the total occupied range and the jaguar rarely (if ever) contained a breeding population even in historical times.

Our response: The Service is not withdrawing Arizona or New Mexico from critical habitat because the Service is required under the Act to designate critical habitat to the maximum extent prudent and determinable. See our response to comment 1 in the *Peer Reviewer Comments* above.

Further, the Service is not excluding Arizona or New Mexico from critical habitat because 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. Areas that were considered for exclusion were locations where the benefits of exclusion may outweigh the benefits of inclusion as critical habitat (see Exclusion section above). The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear, that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. 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. In the case of the jaguar, the benefits of critical habitat include public awareness of jaguar presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for the jaguar due to the protection from adverse modification or destruction of critical habitat. See the *Application of Section 4(b)(2) of the Act* section of this final rule.

(65) Comment: The area on the edge of Unit 3, to the north of the Santa Rita Mountains near Houghton Road, should be excluded from critical habitat. This area is near an existing residential development and planned for development.

Our response: Designation of critical habitat has been done in accordance with statutory requirements. The area on the edge of Unit 3 includes all the PCEs identified as the physical or biological features that provide for the jaguar's life-history processes and are essential to the conservation of the species, including being characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-km^2 (0.4-mi^2) area. Development actions funded, authorized, or carried out by a Federal agency must enter into consultation with the Service if the Federal action may affect critical habitat. Please see our response to comment number 64 in the *Comments from States* above for additional information on exclusions under the Act. In the case of the jaguar where a Federal nexus exists, the benefits of critical habitat include increased habitat protection for the jaguar due to the protection from adverse modification or destruction of critical habitat. See the *Application of Section 4(b)(2) of the Act* for a full discussion of the areas we have determined are appropriate to exclude from the final designation of critical habitat.

(66) Comment: Federal lands should be excluded from critical habitat designation.

Our response: The Service is not excluding Federal lands from critical habitat designation. Please see our responses to comment numbers 64 and 65 in the *Comments from States* above for additional information on exclusions under the Act. There is additional benefit to including the federally owned lands in the designation of critical habitat because of the Federal agencies' obligation to consult under section 7 of the Act on activities that may adversely modify critical habitat. Consequently, we have not determined that the benefits of excluding these areas outweigh the benefits of including these areas. Please see the *Application of Section 4(b)(2) of the Act* section for a full discussion of the areas we have determined are appropriate to exclude from the final designation of critical habitat.

(67) Comment: The benefits of not designating critical habitat outweigh the benefits of designating critical habitat because the designation of critical habitat will result in denial of access to lands for jaguar conservation and research, fewer observations reported, and an increase in illegal activities undermining recovery of threatened and endangered species.

Our response: 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.

Designated 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. Any of these or other actions on Federal lands that may affect the jaguar or its designated critical habitat would be required to consult with the Service to ensure those actions are not adversely modifying its critical habitat. However, consultation is already required because the jaguar is listed as endangered. All projects with a Federal nexus proposed within jaguar critical habitat in the United States will be evaluated on a case-by-case basis with respect to section 7 of the Act. The designation of critical habitat does not prohibit humans and legal activities. Legal activities that have a Federal nexus (in that they occur on Federal lands, require a Federal permit, or receive Federal funds) will be evaluated on a case-by-case basis with respect to section 7 (consultation with the Service) of the Act to ensure they do not destroy or adversely modify designated critical habitat.

We have been consulting with Federal agencies on their effects to the jaguar on Federal lands, or on projects for which a Federal nexus exists, since the species was listed in 1972. Since jaguars were listed, we have had no projects on privately owned lands that had a Federal nexus to trigger formal consultation under section 7 of the Act. Therefore, the Service does not anticipate a decrease in authorized access to lands for conservation and research or a decrease in observations reported. Further, illegal activity is not expected to increase with the designation of critical habitat, because designated critical habitat does not prevent legal activities from occurring within its boundaries, including law enforcement related to illegal activities (border control issues).

(68) Comment: The analysis of significance of the critical habitat designation within the draft environmental assessment is inadequate, and the Service should prepare a full environmental impact statement (EIS). We also received several similar comments from the members of the public.

Our response: We analyzed the potential impacts of critical habitat designation on the following resources and resource management types: Land use and management; fish, wildlife, and plants (including endangered and threatened species); fire management; water resources (including water management projects and groundwater pumping); livestock grazing; construction and development (including roads, bridges, dams, infrastructure, residential); tribal trust resources; soils; recreation and hunting; socioeconomics; environmental justice;

mining and minerals extraction; and National security. We found that the designation of critical habitat for the jaguar would not have direct impacts on the environment as designation is not expected to impose land use restrictions or prohibit land use activities. Our environmental assessment found that the impacts of the proposed critical habitat designation would be minor and not rise to a significant level. An EIS is required only if we find that the proposed action is expected to have a significant impact on the human environment. The completed studies, evaluations, and public outreach conducted by the Service have not identified impacts resulting from the proposed designation of critical habitat that are clearly significant. Based on our analysis and comments received from the public, we prepared a final EA and made a Finding of No Significant Impact (FONSI), negating the need for preparation of an EIS. We have determined our environmental assessment is consistent with the spirit and intent of NEPA. The final environmental assessment, FONSI, and final economic analysis provide our rationale for determining that critical habitat designation would not have a significant effect on the human environment. Those documents are available for public review (see **ADDRESSES** section).

(69) Comment: A complete economic analysis should accompany any proposed Federal action, which would allow stakeholders the opportunity to review, analyze, and comment on the economic consequences of this critical habitat designation.

Our response: The Service published our proposed rule to designate critical habitat for the jaguar August 20, 2012. At that time our current 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 interprets 'after proposing' to mean after publication of the proposed critical habitat rule. The President's Feburary 28, 2012, memorandum directed the Service to take prompt steps to revise our regulations to provide that the 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 finalized revisions to these regulations on October 30, 2013, which was after we had published the proposed rule to designate critical habitat for the jaguar. Consequently, when we published the jaguar critical habitat rule, we followed the regulations that were current at the time.

(70) Comment: The draft economic analysis does not consider economic impacts resulting from employment-related uses of Federal land, such as mining and cattle grazing.

Our response: The draft economic analysis addresses impacts to mining operations in Chapter 5 and to livestock grazing in Chapter 3 (grazing on Federal lands) and Chapter 9 (grazing on State and private lands). We assume that economic activities occurring on Federal lands will have a Federal nexus for section 7 consultation through the Federal land manager. For activities such as livestock grazing that occur on State or private lands, we consider the potential for projects to involve Federal permits or funding, such as funding from NRCS. In these cases, we forecast section 7 consultations. We also consider the potential for indirect effects, such as the withdrawal of NRCS applications resulting from the stigma of critical habitat designation.

(71) Comment: The designation of critical habitat could have substantial economic impacts on local economies and employment by threatening Federal approval of the Rosemont Mine.

Our response: In October 2013, the Service completed a biological opinion and conference opinion with the U.S. Forest Service for the Rosemont Mine. The biological opinion concluded that the Rosemont Mine would not constitute jeopardy to the jaguar. A conference opinion was also completed to address the impacts of the Rosemont Mine to the then-proposed critical habitat designation for jaguar, which concluded that the mining operation is not likely to destroy or adversely modify jaguar critical habitat.

The final economic analysis has been revised based on the biological and conference opinion. The Rosemont Mine is located in a unit of critical habitat that is occupied by the jaguar. Since the jaguar is currently a listed species, conservation efforts are already undertaken to avoid jeopardy to the species in this area and, therefore, the economic impacts are predominantly captured in the baseline. Through our evaluation of impacts of the critical habitat designation, we determined that most of the conservation efforts are not a result of the critical habitat designation itself, but rather a result of the jaguar being a listed species, and, therefore, incremental impacts of the critical habitat designation are largely limited to transactional costs. As a result, the incremental impact, economic or from other relevant factors, of the designation on the mine is expected to be minimal.

Section 4(b)(b)(2) of the Act states that the Secretary may exclude a specific area from critical habitat if the benefits of excluding the area outweigh the conservation benefits of including it, providing the exclusion does not result in the extinction of the species. In the case of the Rosemont Mine, we have not found any disproportionate impacts, economic or other, on the Rosemont Mine due to the critical habitat designation because the area is occupied, a section 7 consultation was just completed providing approval for the mine project, and conservation measures are primarily captured in the baseline. Therefore, the Secretary did not find it to be reasonable or appropriate for the Service to enter into the discretionary exclusion analysis about whether to exclude the mine from the final designation.

(72) Comment: The designation could adversely affect operations at Fort Huachuca. Fort Huachuca is important to the local economy, it contributes approximately $2.4 billion annually to the state economy, and it is the primary employer in the area.

Our response: Fort Huachuca's 2013 INRMP includes benefits for jaguars and their habitat that were not included in their previous INRMP. Based on our review of Fort Huachuca's 2013 INRMP, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the portion of Unit 3 and Subunit 4c within this installation, identified as meeting the definition of critical habitat, is subject to the INRMP, and that conservation efforts identified in this INRMP will provide a benefit to the jaguar. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B) of the Act. Further, as described in section 8.1 of the draft economic analysis, the Department of Defense (DOD) has already incorporated the species into its management planning. As a result, the Service and DOD do not anticipate that jaguar critical habitat designation will change the outcome of future section 7 consultations associated with operations at Fort Huachuca. Furthermore, because conservation management for the jaguar is typically passive in nature (i.e., no specific changes to operations at Fort Huachuca are anticipated to accommodate jaguar conservation), the draft economic analysis does not forecast any restrictions on Fort actions

that would result in costs of conservation efforts for the jaguar, even absent critical habitat designation.

(73) Comment: The draft economic analysis underestimates impacts to livestock grazing. Costs that a rancher will incur for a single consultation could exceed $20,000 to $25,000, and could include such expenses as hiring consultants, attending consultations, reviewing biological opinions, participating in the NEPA process, filing appeals of other Federal agency findings if necessary, modifying ranching operations, modifying water use, and implementing jaguar conservation measures.

Our response: While the commenters are correct that consultation efforts have the potential to result, in some cases, in significant costs, the economic analysis does not anticipate that many new consultations would occur as a result of critical habitat alone; that is, most consultations on jaguar are anticipated to occur regardless of critical habitat designation. As a result, the incremental costs of considering critical habitat in a jaguar consultation are low because consultation is already occurring to address impacts to the species. Similarly, conservation efforts for jaguar are not anticipated to exceed those that already would have been requested under the baseline (for the species). As such, incremental costs associated with undertaking these measures are not included in the economic analysis.

(74) Comment: The designation of jaguar critical habitat may result in increased livestock predation. These impacts are not evaluated in the draft economic analysis.

Our response: The Service is aware of one jaguar depredation event in the United States since 1961, which occurred in the Altar Valley area in 2007 (McCain and Childs 2008, pp. 4–5). The Service recognizes that cattle depredation may occur. However, the jaguar is already present in the United States and protected under the Act as a listed species. The designation of critical habitat in the United States will not change the possibility of cattle depredation due to jaguars. The Service is not proposing to reintroduce or supplement jaguar populations in the United States. Therefore, we do not anticipate that designating critical habitat for the jaguar will result in economic impacts through livestock depredation. We are aware, however, of the concern that cattle depredations may occur in the future, and we are working with the Jaguar Recovery Team to develop strategies to avoid these types of conflicts.

(75) Comment: The draft economic analysis underestimates impacts because it does not consider water use and water allocation issues. The designation will create water use conflicts, resulting in negative impacts to livestock producers. The designation could result in substantial economic impacts by infringing on existing water rights to provide water for jaguar conservation.

Our response: As described in the Service's incremental effects memorandum, provided as Appendix C to the draft economic analysis, possible project modifications to avoid jeopardy to the species and adverse modification or destruction of critical habitat include: using technology-based surveillance rather than fencing where possible; creating permeable highways by including wildlife crossings appropriate to jaguars in the project design; re-vegetating and restoring areas of large-scale habitat removal; modifying or eliminating the presence of stable nighttime lighting; reducing the footprint of large facilities to the maximum extent practicable; minimizing the amount or extent of human presence, vehicles, or traffic in a given area; providing conservation measures to restore, enhance, and protect habitat within critical habitat units; offsetting permanent habitat loss, modification, or fragmentation resulting from agency actions with habitat that is permanently protected, including funding to ensure the habitat is managed permanently for the protection of the species; and providing resources to assess the effects of the action on jaguar habitat connectivity and function. These conservation measures are addressed as relevant for projects forecast in the draft economic analysis. Based on these possible project modifications, the draft economic analysis does not expect that jaguar conservation will require changes to water allocation.

Comments From Federal Agencies

(76) Comment: There is no habitat in the United States that is critical to the recovery of the jaguar or its survival as a species.

Our response: See our response to comment number 1 in the *Peer Reviewer Comments* above.

(77) Comment: Jaguar critical habitat in the United States is not essential because jaguars have persisted in the Northern Recovery Unit for the last 50 years with no evidence of breeding in the United States during that time.

Our response: See our response to comment number 4 in the *Peer Reviewer Comments* above.

(78) Comment: Areas in the United States will function primarily to support dispersing or transient jaguars, although breeding could have occurred in the past.

Our response: See our response to comment number 11 in the *Peer Reviewer Comments* above.

(79) Comment: Designation of critical habitat is not due to new data but due to litigation.

Our response: See our response to comment number 2 in the *Peer Reviewer Comments* above.

(80) Comment: Fort Huachuca should be exempted from critical habitat designation based on the Fort's Integrated Natural Resources Management Plan (INRMP) that was prepared under section 101 of the Sikes Act (16 U.S.C. 670a) and which currently provides a benefit to the jaguar.

Our response: The Service has exempted Fort Huachuca from critical habitat designation based on their INRMP. See the Exemptions section of this final rule for further information.

(81) Comment: The Chiricahua and Dos Cabezas Mountains are essential and therefore should be included in the designation.

Our response: The critical habitat designation includes those areas in the United States that meet the definition of critical habitat as defined in the Act. Because habitat in the United States is at the edge of the species' northern range, and is marginal compared to known habitat throughout the range, we have determined that all of the primary constituent elements discussed must be present in each specific area to constitute critical jaguar habitat in the United States, including connectivity to Mexico (but that connectivity may be provided either through a direct connection to the border or by other areas essential for the conservation of the species; see *Areas Essential for the Conservation of Jaguars,* above). The Chiricahua and Dos Cabezas Mountains either were not occupied at the time of listing or do not contain the PBF and PCEs the Service has determined are needed for it to function for jaguars.

(82) Comment: Valley bottoms should be included in the critical habitat designation because it is clear that jaguars traverse the valley bottoms to reach more suitable habitat. Further, these areas potentially contain necessary water sources.

Our response: We acknowledge that jaguars will use valley bottoms (for example, McCain and Childs 2008, p. 7), and other areas of habitat connectivity to move between areas of higher quality habitat found in isolated mountain

ranges in the United States and that water sources within valleys may be used by jaguars. However, as described in the proposed rule and this final rule, there is only one occurrence record of a jaguar in a valley between mountain ranges. Therefore, the best available scientific and commercial information does not allow us to determine which particular area within the valleys may be essential, and all of the valley habitat is not essential to the conservation of the species. See *Connectivity between expansive open spaces within the United States,* above, in this final rule. Also, see our response to comment number 8 in the *Peer Reviewer Comments* above.

(83) Comment: The listing time period used by the Service to determine occupancy is not consistent with the Act.

Our response: See our response to comment number 42 in *Comments from the States* above.

(84) Comment: There will never be a breeding population in the United States, thus there is no need for critical habitat in the United States.

Our response: See our response to comment number 11 in *Peer Reviewer Comments* above.

(85) Comment: Jaguar prey species are in decline and will not support jaguars.

Our response: See our response to comment number 20 in *Peer Reviewer Comments* above.

(86) Comment: The Service neglects to account for the fact that the DHS can waive all laws to expedite construction of a border fence and to remove any obstructions to the detection of illegal aliens, 1,126 km (700 mi) of barrier fence is required to be built along the U.S.-Mexico border, lighting has been added along the border that would impact jaguar critical habitat, and a constant flow of human traffic occurs through jaguar critical habitat. This is not consistent with the HII PCE. Additionally, the Service only considered stationary human population and did not account for transient humans crossing the border.

Our response: We understand that laws related to the expeditious construction of border infrastructure in areas of high illegal entry may be waived by the Secretary of DHS, and have discussed this in the *Special Management Considerations or Protections* section of this final rule. As also noted in this final rule, there are no known plans to construct additional security fences in the designated critical habitat, although should future national security issues require additional measures, the Secretary of DHS may invoke the waiver, and special management considerations would continue to occur on a voluntary basis on activities covered by a waiver. There are other forms of border infrastructure, however, that do not fall under this waiver (construction of towers, for example); therefore, special management considerations apply to these projects, and we consult with DHS to minimize the impacts to listed species and their critical habitat.

We also understand that human activity (both legal and illegal) occurs along the U.S.-Mexico border, including within critical habitat. At times this activity can be intense, involving many people, vehicles, lighting, and equipment. However, this activity is also transitory, in that activity hot spots will develop in one area, then move to another area for a variety of reasons (for example, increased law enforcement can shift illegal border activity to another area). Therefore, because of the variable nature and unknown location of this activity, we are not able to predict its effect on jaguar critical habitat. Additionally, because the impacts of these activities shift around the landscape and are not permanent in nature, they do not necessarily entirely preclude jaguars from using an area, once the activity diminishes and moves to another location. Therefore, we continue to use HII as the best available science reflecting human influence on the landscape.

(87) Comment: With Arizona alone growing by 1.5 million people from the mid-1990s to mid-2000s, the Service should account for future population growth in the southwest.

Our response: We acknowledge that the human population has grown and continues to grow throughout the southwestern United States. Should this growth occur within critical habitat to the extent that the HII PCE may be affected and a Federal nexus exists, the Service would consult on proposed actions related to human population growth (e.g., roads, development, transmission lines) with the action agency to minimize the effects of increasing the HII within critical habitat. We understand human population growth may occur without consultation in areas where a Federal nexus does not exist; in these areas, special management considerations to minimize the effects of increasing the HII would occur on a voluntary basis.

(88) Comment: The Service should consider that as conservation uncertainties arise in the Mexican part of the range and climate change alters natural resources, protecting critical habitat in the United States and facilitating connectivity between current range and historical range with adequate, and sometimes superior, resources is paramount for longitudinal conservation action. The borderlands area is often referred to as marginal habitat because the core breeding population is much farther south, but this area is perhaps growing more critical for the species and represents a feasible opportunity for conservation and recovery. Climate change is an important factor in the recovery of jaguars in the borderlands and the Service appropriately included it in the discussion within the proposed rule. Additionally, climate change effects on jaguars are uncertain, but the Service should consider that some potential impacts, such as increased periods of drought, underscore the importance of building resource capacity and connectivity.

Our response: The Service recognizes that climate change may be a factor in the conservation of the jaguar. The Service further recognizes the importance of maintaining connectivity between the United States and Mexico. In our proposed rule and this final rule we identify connectivity between expansive open spaces in the United States and Mexico as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States. The ability for jaguars in the proposed Northwestern Recovery Unit to utilize physical and biological habitat features in the borderlands region is ecologically important to the recovery of the species; therefore, maintaining connectivity to Mexico is essential to the conservation of the jaguar.

(89) Comment: The maps provided by the Service are insufficient in detail.

Our response: The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0042 and at the Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Enhanced color maps and site-specific boundaries of the critical habitat in both GIS and Google Earth format can be viewed and downloaded from *http://www.fws.gov/southwest/es/arizona.http.* See our response to comment 43 in *Comments from States* above for the Web site links to all the GIS data layers that we used in evaluating PCEs in this final rule.

(90) Comment: Has government-to-government consultation with the Service occurred?

Our response: Yes. Please see the Government-to-Government

Relationship with Tribes section of this final rule for a description of consultation between the Service and the Tohono O'odham Nation.

(91) Comment: The BIA requested that the Tohono O'odham Nation be excluded from critical habitat designation based on section 4(b)(2) of the Act. The BIA references the jaguar management plan that is under development by the Tohono O'odham Nation.

Our response: We have determined, pursuant to section 4(b)(2) of the Act, that we will exclude approximately 20,764 ha (51,308 ac) of Tohono O'odham Nation land in Subunit 1a and approximately 10,829 ha (26,759 ac) of Tohono O'odham Nation land in Subunit 1b, from the final designation of critical habitat. See the *Exclusions Based on Other Relevant Impacts* section above for more detailed information.

(92) Comment: Several points in the proposed rule indicate that adverse modification analysis would be required only for occupied habitat. Why would the analysis not be required for unoccupied critical habitat?

Our response: Adverse modification analysis during section 7 consultation would be conducted for projects with a Federal nexus that may adversely modify critical habitat in both occupied and unoccupied critical habitat.

(93) Comment: The draft economic analysis should address impacts to national security that could result if the construction of border fences or related infrastructure is affected by jaguar conservation. Land located near the border may be devalued due to national security impacts. Illegal immigration and drug trafficking may increase in the vicinity of the proposed designation.

Our response: Chapter 4 of the draft economic analysis discusses impacts to border protection activities. As described in section 4.1 of the draft economic analysis, CBP does not anticipate that activities planned within the proposed designation will cause permanent changes to the landscape or sever connectivity to Mexico and are, therefore, unlikely to require any changes to jaguar conservation measures than those already planned under the listing of the species. CBP already implements baseline conservation measures according to best management practices for the jaguar in all critical habitat units. As a result, we do not forecast any impacts to national security as a result of critical habitat designation for jaguar.

Comments From Tribes

(94) Comment: The Tohono O'odham Nation should be excluded from critical habitat designation based on section 4(b)(2) of the Act.

Our response: We have determined, pursuant to section 4(b)(2) of the Act, that we will exclude approximately 20,764 ha (51,308 ac) of Tohono O'odham Nation land in Subunit 1a and approximately 10,829 ha (26,759 ac) of Tohono O'odham Nation land in Subunit 1b, from the final designation of critical habitat. See the *Exclusions Based on Other Relevant Impacts* section above for more detailed information.

(95) Comment: Fort Huachuca should be exempted from critical habitat designation based on the Fort's Integrated Natural Resources Management Plan (INRMP) that was prepared under section 101 of the Sikes Act (16 U.S.C. 670a) and which currently provides a benefit to the jaguar.

Our response: The Service has exempted Fort Huachuca from critical habitat designation based on their INRMP. See the Exemptions section of this final rule for further information.

Public Comments

General

(96) Comment: Data indicate Arizona and New Mexico lack the habitat necessary for jaguars. There is no Sinaloan thornscrub in the United States; therefore, the United States does not have the vegetation necessary for jaguars to feed, breed, reproduce, and find shelter, which is why there is no jaguar population in existence in the United States.

Our response: The Service acknowledges that Sinaloan thornscrub does not occur in the United States. However, we have determined that Madrean evergreen woodland and semidesert grassland provide the biotic community component of the physical or biological feature utilized by jaguars north of the U.S.-Mexico border. Therefore, these two biotic communities are included as a PCE within the designation. Further, the Act does not require a breeding or reproducing population of jaguars be present for the purposes of designating critical habitat.

(97) Comment: Habitat in the United States (including southeastern Arizona and southwestern New Mexico) is at the northernmost extreme of the jaguar's range, and is peripheral, marginal, and not essential to the conservation of the species, as demonstrated by Rabinowitz (1997), who has consistently maintained there is no area in the southwestern United States that is critical to the survival of the jaguar and that the area is marginal for the jaguar in terms of water, cover, and prey density. The United States is not shown as a jaguar corridor on the map published by Rabinowitz and Zeller (2010). Biological studies and professional opinions abound, and are cited by organizations opposing this designation, that credibly show the jaguar prefers a wet tropical climate to breed and exist.

Our response: The Service agrees that habitat in the United States is on the northern periphery of the jaguar's range; however, the Service has identified critical habitat for the jaguar in accordance with the Act and implementing regulations. See our response to comment number 1 in the *Peer Reviewer Comments* above.

(98) Comment: Any area that contains the PCEs does not automatically qualify as critical habitat. It can hardly be said that these features are essential to the conservation of the species merely because they can sustain temporary presence of the species.

Our response: The Act does not state that critical habitat applies only to resident or breeding populations, or that for an area to be occupied critical habitat it must contain a female or documented breeding. Rather, section 3(5)(A)(i) of the Act defines occupancy as the specific areas within the geographical area occupied by the species, at the time it is listed. Further, in the decision of *Arizona Cattle Grower's Assoc.* v. *Salazar,* 2009 U.S. App. Lexis 29107 (June 4, 2010), the Ninth Circuit affirmed that the Service has the authority to designate as occupied all areas used by a listed species with sufficient regularity that members of the species are likely to be present during any reasonable span of time. Therefore, occupancy of an area can be indicated by the presence of an individual member of the species, and we have determined that critical habitat may have been occupied at the time of listing based on this definition in conjunction with observations of jaguars in those areas (as described in Table 1 of this final rule).

(99) Comment: The proposed critical habitat in the United States will have little to no effect on the jaguar's survival and recovery. The listed species is the entire jaguar taxon; critical habitat, therefore, must be essential to conserving that species as a whole. Other than a possible contribution to the genetic diversity of the species, there is no indication of any kind why the designation of critical habitat would somehow be essential to the conservation of the species as a whole.

Our response: Critical habitat in the United States contributes to recovery across the jaguar's entire range by providing the physical or biological feature for jaguar critical habitat and the associated PCEs. The Service recognizes that the designated critical habitat in the United States is only a small portion of the jaguar's range and we anticipate that recovery of the entire species will rely primarily on actions that occur outside of the United States; activities that may adversely or beneficially affect jaguars in the United States are less likely to affect recovery than activities in core areas of their range (Jaguar Recovery Team 2012, p. 38). However, the portion of the range in the United States is located within a secondary area (as identified in the Recovery Outline) that provides a recovery function benefitting the overall recovery unit (Jaguar Recovery Team 2012, pp. 40, 42). For example, specific areas within this secondary area that provide the physical and biological features essential to jaguar habitat can contribute to the species' persistence and, therefore, overall conservation by providing areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit (about 210 km (130 mi) south of the U.S.-Mexico border.

Independent peer review cited in our July 22, 1997, clarifying rule (62 FR 39147, pp. 39153–39154) states that individuals dispersing into the United States are important because they occupy habitat that serves as a buffer to zones of regular reproduction and are potential colonizers of vacant range, and that, as such, areas supporting them are important to maintaining normal demographics, as well as allowing for possible range expansion. As described in the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, pp. 40, 42), the Northwestern Recovery Unit is essential for the conservation of the species; therefore, consideration of the spatial and biological dynamics that allow this unit to function and that benefit the overall unit is prudent. Providing connectivity from the United States to Mexico is a key element to maintaining those processes.

(100) Comment: There is no rational or prudent basis for designating critical habitat in the United States. There is no area in the United States that is essential to the conservation of jaguars.

Our response: The Service has identified critical habitat for the jaguar in accordance with the Act and its implementing regulations. The Service has determined that designation of critical habitat for the jaguar is prudent and determinable based on the best available scientific data available. Section 4(a)(3)(A) of the Act, states that critical habitat shall be designated for endangered and threatened species to the maximum extent prudent and determinable. Therefore, we are required to designate critical habitat for the jaguar to fulfill our legal and statutory obligations. See our response to comment number 1 in the *Peer Reviewer Comments* above.

(101) Comment: The Service states that a goal of critical habitat is to support a population of 50 to 100 jaguars in the United States by protecting and increasing connectivity between the United States and Mexico.

Our response: See our response to comment number 4 in the *Peer Review Comment* section above.

(102) Comment: Corridors to unsuitable or marginal habitat can de-stabilize jaguar populations (Desbiez *et al.* 2012), particularly if the source population is itself unstable. Analyses presented by Carillo *et al.* (2007) indicate that the Sonora population appears to be decreasing, and some jaguar experts consider the southwestern United States to consist of marginal habitat for jaguars (see Johnson *et al.* 2011). Thus, linking jaguar population in Mexico to the United States may establish a detrimental source-sink relationship. The results of our PVA analysis indicate that the Service's goal of establishing a breeding population of jaguars in the United States may have negative consequences to the stability and persistence of jaguar populations in the Northwestern Management Unit.

Our response: We disagree that designating critical habitat will destabilize the nearest breeding population in Mexico. The purpose of designating critical habitat in the United States is not to create a self-sustaining, breeding population north of the U.S.-Mexico border, but to provide small patches of habitat (perhaps in some cases with a few resident jaguars) to allow for the cyclical expansion and contraction of the nearest core area in Mexico. Therefore, critical habitat in the United States contributes to recovery by providing protection of these areas within the proposed Northwestern Recovery Unit. Further, the jaguar has been listed as an endangered species since 1972, and already receives protection under the Act. The designation of critical habitat does not increase the number of jaguars present in the United States. 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 number 52 in *Comments from States* above.

(103) Comment: The Service should consider the importance of connecting the Jalisco and Sonora populations to support a stable metapopulation in the Northwestern Management Unit. Increasing connectivity between Jalisco and Sonora improves population growth rate, decreases the probability of extinction and increases genetic heterozygosity in Sonora, creates a stable Sonoran population, and supports a stable metapopulation. Creating a breeding population in the United States could have detrimental effects on population growth and persistence in the region, and conservation measures in Mexico rather than the United States are needed to benefit jaguars in the Northwestern Management Unit.

Our response: We agree that jaguar conservation in Mexico and throughout its range are necessary to recover the species, and we are collaborating with partners to conserve jaguars throughout their range, including improving dispersal opportunities between the Jalisco and Sonora populations. We disagree that designating critical habitat will detrimentally affect jaguar population growth and persistence in the region (see our response to comment number 15 in *Peer Reviewer Comments* and 52 in *Comments from States* above). The purpose of the designation of critical habitat is not to establish a breeding population of jaguars in the United States. The purpose of critical habitat in the United States is to provide small patches of habitat (perhaps in some cases with a few resident jaguars) to allow for the cyclical expansion and contraction of the nearest core area in Mexico. Critical habitat is not being designated to create a self-sustaining, breeding population north of the U.S.-Mexico border, but to allow individuals from the nearest breeding area in Mexico areas within which they may persist during a portion of their life cycle.

(104) Comment: The Service should work with Dr. Rabinowitz and other jaguar experts in Mexico, Central America, and South America to protect jaguar habitat, including corridors. Since the nearest breeding population is 209 km (130 mi) south in Mexico and there are breeding populations throughout Central and South America,

science and logic dictate spending resources and efforts where jaguars breed.

Our response: The Service is collaborating with partners (including members of Dr. Rabinowitz's organization, Panthera) to conserve jaguars and their habitat throughout the range of the jaguar, particularly within the proposed Northwestern Recovery Unit. We are currently working with the Jaguar Recovery Team to complete a draft recovery plan for the jaguar, which we expect will be available in 2014. The recovery plan will include guidance, criteria, and actions pertaining to recovering the species throughout its entire range (although focusing on the Northwestern Recovery Unit), including information about habitat, corridor, and breeding area protection.

(105) Comment: The designation of critical habitat appears political instead of scientific, which violates the Act at every level.

Our response: Designation of critical habitat has been done in accordance with statutory requirements. See our response to comment number 1 in the *Peer Reviewer Comments* above.

(106) Comment: Set-aside protection mechanisms, like critical habitat, may not be necessary to meet the jaguar's habitat needs.

Our response: See our response to comment number 1 in the *Peer Reviewer Comments* above.

(107) Comment: Habitat fitting the description of the physical or biological feature and associated PCEs of jaguar critical habitat is widespread in Arizona, and any actions that would impact jaguars are already required to be evaluated by provisions under the Endangered Species Act and National Environmental Policy Act (NEPA).

Our response: Since the jaguar is a federally listed species under the Act, actions with a Federal nexus that may impact jaguars are evaluated under the Act and potentially NEPA. However, critical habitat does afford protection to the jaguar through section 7 consultation under 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. 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. Therefore, actions that are funded, permitted, or carried out by a Federal agency within jaguar critical habitat will continue to be evaluated to determine their impacts on critical habitat.

(108) Comment: The lack of breeding populations or residency in the United States indicates there is no critical habitat. There are no areas in the United States that could be considered ''occupied.'' The males detected in the United States have likely originated from the Sonora population, and their genetic resources are thus a consequence of the population genetics and environmental conditions acting upon the Sonora population. While the Sonora population may be important for the conservation of the species, a small population in the United States, if it was to exist, is not an important peripheral population in the context of the conservation of the species. Based on the movement behavior of female jaguars, it is unlikely that female jaguars would cross road barriers (some including large highways with presumably high traffic volumes) or other areas of human disturbance in the over 130 miles between the Sonora population and the areas of critical habitat in the United States. Suitable habitat for jaguars between the Sonora population and the United States is fragmented and of marginal quality. A general increase in human impacts across the landscape through time is correlated with a lack of female records in the United States, lending credence to the possibility that conditions in northern Mexico may act as a barrier to female dispersal to the United States.

Our response: As described in the proposed rule and this final rule, barriers prohibiting the dispersal of females to the United States are unknown. Based on information about large carnivores, male felids can move long distances in the process of dispersal (Logan *et al.* 1986 and López González 1999, as described in Boydston and López González 2005, p. 51), but when female dispersal does occur, distances are much shorter (Logan and Sweanor 2011, as described in Boydston and López González 2005, p. 51). Therefore, it may be possible that barriers exist to female dispersal into the United States; however, as described in the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, pp. 24, 44), further research on gender- and age-specific estimates of dispersal rates and travel distances is needed within the Northwestern Recovery Unit. The Act does not state that critical habitat applies only to resident or breeding populations, or that for an area to be occupied critical habitat it must contain a female or documented breeding. Further, establishing a breeding population of jaguars is not the purpose of critical habitat designation. See our response to comment number 11 in *Peer Reviewers Comments* above.

(109) Comment: Some authors argue that suitable habitat for females does exist in southern Arizona and New Mexico, but note that habitat preferences differ considerably between male and female jaguars (Boydston and López-Gonzáles 2005). The lack of female detections in the United States may be indicative of conditions over the past 60 years that have resulted in an altered landscape whereby habitats preferred by females (e.g., forested areas, especially broad-leaf forests (Boydston and López-Gonzáles 2005)) no longer occur in the United States in sufficient quantities to support female occupancy and breeding. Moreover, because females have not been detected recently in the United States, habitat conditions at the locations of female jaguar detections, used in building habitat models, have likely changed, a fact that is not accounted for by the approach taken by the Service's modeling effort to identify and map critical habitat. Similarly, the development of PCEs for critical habitat is based on records that are likely to be mostly male jaguars. Consequently, the areas identified as critical habitat may be suitable for male jaguars, but fail either to benefit female jaguars or allow for the establishment of breeding territories.

Our response: We acknowledge that the majority of detections used to develop the habitat model for the jaguar in the Northwestern Recovery Unit may have been males. Standard camera-trapping techniques appear to have a bias towards capturing male jaguars as opposed to females (Harmsen *et al.* 2009, entire). Harmsen *et al.* (2009, pp. 615–616) captured 23 individual males during 100 days of camera trapping, but only captured 6 individual females during this same time period. This is likely because male jaguars roam farther and tend to use large pathways more than females, making it more likely they will be picked up using camera trap techniques (which often are located along open pathways to facilitate capturing recognizable photos). However, even when used off trail (such as along small streams, game trails, and landscape features), Harmsen (2006) found that camera trapping did not reveal any habitat characteristics associated with higher capture rates of females (as cited in Harmsen *et al.* 2009, pp. 613, 618).

Even so, the Act does not state that critical habitat must apply to both males and females of a species. Further, establishing a breeding population of

jaguars is not the purpose of critical habitat designation. See our response to comment number 11 in *Peer Reviewers Comments* above.

(110) Comment: The United States is a peripheral area; therefore, the Service should not designate critical habitat in the United States.

Our response: Please see our response to comment number 1 in the *Peer Reviewer Comments* above.

(111) Comment: Habitat in the United States is marginal and not essential to the conservation of the species, as demonstrated by Rabinowitz (2010).

Our response: The Service agrees that habitat in the United States is on the northern periphery of the jaguar's range; however, the Service has identified critical habitat for the jaguar in accordance with the Act and implementing regulations. See our response to comment number 1 in the *Peer Reviewer Comments* above.

(112) Comment: The Service should exclude the Rosemont Mine. Excluding the mine will not cause the species' extinction. Rosemont Mine has incurred costs well in excess of $100 million in developing the project and should be excluded based on economic considerations.

Our response: We have not excluded the Rosemont Mine from critical habitat. See our response to comment number 71 in the *Comments from States* above.

Additionally, the Service recognizes the perceptional effects of the designation of critical habitat in general, and specifically, for the designation of critical habitat for the jaguar. The costs of developing the Rosemont Mine and the potential economic benefit of the mine are not factors in considering whether to exclude the mine area from critical habitat. The Secretary has the discretion to exclude specific areas from critical habitat based on the economic impact or other relevant factors. The basis for excluding a particular area due to a probable economic impact is to relieve the probable impact that may be due solely to the designation of critical habitat. In this particular instance for jaguar critical habitat, we find no such probable economic impact due solely to the designation of critical habitat. The Rosemont Mine area is occupied by the jaguar and, consequently, any conservation measures that have been implemented to date, or anticipated, for the jaguar are a result of the species' listing, not the designated critical habitat. Furthermore, a recently completed biological and conference opinion found the construction and operation of the Rosemont Mine would not jeopardize the jaguar nor adversely modify designated critical habitat. This last point, no adverse modification of critical habitat, is a major determining factor in whether the Secretary would consider the exclusion of the mine area from critical habitat. Since the Service determined the proposed mining operation would not destroy or adversely modify critical habitat, no conservation measures or reasonable or prudent alternatives were suggested. Therefore, probable economic impacts forecast as the result of the designation of critical habitat are predominantly limited to transactional costs. Since the basis for an economic-based exclusion is to forego probable economic impacts, and there are limited forecast economic impacts from critical habitat, the Secretary did not choose to enter into the discretionary exclusion analysis under section 4(b)(2) of the Act. As stated previously, the costs of developing the mine and any conservation measures implemented or recommended by the Service specific to jaguar are primarily the result of the listing of the species, not critical habitat.

(113) Comment: Habitat Conservation Plans (HCPs) should not be excluded from critical habitat, specifically the Pima County Draft Multi-Species HCP and Malpai Borderlands HCP should not be excluded.

Our response: The Pima County draft Multi-Species HCP and the Malpai Borderlands HCP lack management plans that address jaguar habitat. Consequently, we have not determined that the benefits of excluding these areas outweigh the benefits of including these areas.

(114) Comment: The Service should include all of the ''Sky Islands'' within the designation including the Chiricahua, Dos Cabezas, Dragoon, Mule, Rincon, Santa Catalina, Galiuro,Winchester, Whitlock, Pinaleño, Santa Teresa, Animas, Pyramid, Alama Hueco, Big Hatchet, Little Hatchet, Florida, West and East Potrillo, Cedar, and Big Burro Mountains, and portions of the Peloncillo Mountains north of the current boundaries of the Northwestern Recovery Unit. These areas should be included because they either have documented jaguar presence or they contain the PCEs as defined by the Service. The Service should also include areas north of the current proposed critical habitat in the Mogollon Rim area (along with adjoining spurs and canyons, including the Grand Canyon) in Arizona and to the north and east into the contiguous lands of the Gila National Forest along with the Plains of San Augustin, the Zuni Plateau, the El Malpais National Monument and National Conservation Area, and the San Mateo, Magdalena, Chupadera, Datil, Sawtooth, Luera, and Summit Mountains in New Mexico. These areas represent a potentially vital refugium for the northern jaguar population, given the expected trajectory of increasing land use and climate change across the southwestern United States and northern Mexico.

Our response: The additional Sky Islands and areas north of the designated critical habitat area may be usable by jaguars and may in fact contribute to the recovery of the species, but they are not considered occupied at the time of listing, and are not considered essential to the conservation of the species as unoccupied habitat. Consequently, these areas do not meet the definition of critical habitat as we have interpreted it because they were not occupied at the time of listing nor are they considered essential to recovery. See our response to comment number 3 in *Peer Reviewer Comments* above.

(115) Comment: The Service should designate additional areas of critical habitat because the agency cannot be sure of how much habitat is currently occupied by jaguars in the United States, and lack of detection does not indicate the species is absent. With few exceptions, the relatively large number of confirmed jaguar sightings on which the proposed rule was based were not the result of any official effort to conduct a comprehensive survey of the northern jaguar population in the United States, but were instead essentially collected accidentally. Considering the large and growing number of purely anecdotal sightings of this extremely and notoriously elusive species, it seems extremely reasonable to assume that, should anyone actually try to find jaguars in this region, far more individual jaguars would be discovered.

Our response: The Service agrees that the lack of detection does not indicate the species is absent, and we acknowledge this concept in our proposed rule and this final rule. The Service recognizes that many mobile species are difficult to detect in the wild because of morphological features (such as camouflaged appearance) or elusive behavioral characteristics (such as nocturnal activity) (Peterson and Bayley 2004, pp. 173, 175). This situation presents challenges in determining whether or not a particular area is occupied because we cannot be sure that a lack of detection indicates that the species is absent (Peterson and Bayley 2004, p. 173). See *Occupied Area at the Time of Listing,* above, in this final rule.

Additionally, jaguars are currently being surveyed for and monitored in

mountainous areas in the United States north of the U.S.-Mexico border and south of Interstate 10, from the Baboquivari Mountains in Arizona to the Peloncillo Mountains in New Mexico. Information gathered during this survey and monitoring project (up through September 11, 2013) has been incorporated into this final rule (see Table 1).

(116) Comment: The Service should follow the jaguar habitat modeling efforts of Hatten *et al.* (2005) and Robinson (2006) as a basis for including additional areas in these two States. Hatten *et al.* (2005) identified 21–30 percent of Arizona (approximately 62,000–88,600 km^2 (23,938–34,209 mi^2)) as potential jaguar habitat, and Robinson (2006) identified approximately half of New Mexico (approximately 156,800 km^2 (60,541 mi^2)) as potential jaguar habitat.

Our response: As discussed above, during the Jaguar Recovery Team's analysis and modeling effort, the team considered the modeling efforts of Hatten *et al.* (2005, entire) and Robinson (2006, entire), and further refined the Hatten *et al.* (2005, entire) model such that a similar model could be applied across the entire Northwestern Recovery Unit. The team provided this analysis and habitat model in their 2013 report entitled Jaguar Habitat Modeling and Database Update (Sanderson and Fisher 2013, entire). Therefore, we based critical habitat boundaries on the physical and biological feature and PCEs from the updated habitat modeling report, in which the habitat features preferred by the jaguar in the proposed Northwestern Recovery Unit were described based on the best available science and expert opinion of the Jaguar Recovery Team.

(117) Comment: Congress and the Service's regulations or intentions were to guide designation of critical habitat to lands that are actually occupied by the listed species. Critical habitat should be based on current occupation, not historical, and no areas are currently occupied or were occupied at the time of listing.

Our response: The Service's designation of occupied critical habitat is in compliance with the Act. 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. In regards to areas occupied at the time of listing, see our response to comment number 9 in *Peer Reviewers Comments* above and comment number 42 in *Comments from States.*

(118) Comment: The Santa Rita Mountains and Subunit 4b are not occupied.

Our response: The Santa Rita Mountains are within Unit 3. We determined Unit 3 may have been occupied at the time of listing and is currently occupied based on a record of a male shot in the Patagonia Mountains (also within Unit 3) in 1965 and multiple sightings of a male jaguar from October 2012 through September 11, 2013, in the Santa Rita Mountains (see Table 1 in the final rule). We did not designate Subunit 4b based on occupancy; rather, this unit provides connectivity from Subunit 4a to Mexico (by connecting it to Unit 3, which provides connectivity to Mexico). Connectivity to Mexico is an essential feature of jaguar habitat in the United States.

(119) Comment: The Patagonia Unit (Unit 3) is considered occupied based on only one observation of a jaguar; therefore, it should not be considered occupied.

Our response: At the time we published the proposed rule (77 FR 50214; August 20, 2012), we were aware of only one undisputed Class I jaguar record from Unit 3, which was a male shot in the Patagonia Mountains in 1965 (see Table 1 of this final rule). Since then, a male jaguar has been documented numerous times in the Santa Rita Mountains (see Table 1 of this final rule), which are also within Unit 3. Therefore, we consider this unit occupied.

(120) Comment: The use of female scat as a scent lure renders all scientific documentation of jaguars suspect.

Our response: We understand that some of the jaguar records used in our proposed rule may be disputed due to the possibility that female scat was used as a scent lure in some areas. Therefore, we removed all sightings that may have been influenced by female scat, which we determined to be from October 3, 2008 (the date of Emil McCain's request for jaguar scat from the Phoenix Zoo) through March 2, 2009 (the date Macho B was captured and flown to the Phoenix Zoo). See Table 1 of this final rule for all of the undisputed Class I jaguar records used to determine occupancy.

(121) Comment: The correct date of listing should be 1997 instead of 1972.

Our response: As discussed in the final rule, our intention was to list the species throughout its entire range at the time it was added to the Endangered Species Conservation Act in 1972; therefore, we determine that 1972 is the date the species was listed.

(122) Comment: Occupancy should be determined based on current records, including up to the past 15 years.

Our response: Determining occupancy by a species such as the jaguar can be difficult, given that they were added to the list many years ago, and, by nature, are cryptic and difficult to detect. Therefore, we determine that the appropriate timeframe within which to consider areas occupied by the jaguar at the time of its listing is from 1962 (10 years prior to listing, which is the average lifespan of a jaguar) to September 11, 2013. See our response to comment number 42 in the *Comments from States* above.

(123) Comment: All records collected by and cited in McCain and Childs (2008) should be removed, as the use of female scat as a scent lure at some point during their study indicates that all of their data were invalid.

Our response: We disagree. We understand that some of the jaguar records used in our proposed rule may be disputed due to the possibility that female scat was used as a scent lure in some areas. Therefore, we removed all sightings that may have been influenced by female scat, which we determined to be from October 3, 2008 (the date of Emil McCain's request for jaguar scat from the Phoenix Zoo), through March 2, 2009 (the date Macho B was captured and flown to the Phoenix Zoo). Because we only have information of female scat as a scent lure potentially being used from October 2008 through March 2009, it is speculative to assume that sightings outside of this timeframe were influenced by female scat as a scent lure because the best scientific and commercial data does not indicate this to be the case. See Table 1 of this final rule for all of the undisputed Class I jaguar records used to determine occupancy.

(124) Comment: Remove ''verified tracks'' from consideration, as they can be confused with mountain lion tracks.

Our response: We do not consider it necessary to remove verified tracks from consideration because the tracks that are included in our determination of occupied critical habitat were verified by mountain lion hunters who have sufficient experience in distinguishing mountain lion tracks from jaguar tracks.

(125) Comment: Data used by the Service to designate critical habitat are insufficient, inaccurate, or unreliable because the habitat models developed by Sanderson and Fisher (2011, pp. 1–11; 2013, entire) used other than Class I jaguar records and disputed Class I records (including jaguar locations that

may have been from ''canned'' hunts). Therefore, it is not possible to determine or model the PCEs essential for jaguars.

Our response: See our response to comment number 43 in the *Comments from States* above.

(126) Comment: The 130 jaguar locations used in the Service's August 20, 2012, proposed rule (77 FR 50214) are of questionable legitimacy.

Our response: See our response to comment number 43 in the *Comments from States* above for an explanation of the datasets used in our August 20, 2012, proposed rule (77 FR 50214), July 1, 2013, revised proposed rule (78 FR 39237), and this final rule.

(127) Comment: None of the critical habitat units contain all the PCEs essential to the conservation of the jaguar, or they do not have the PCEs in the appropriate quantities to support jaguars.

Our response: All of the critical habitat units contain all of the PCEs in the appropriate quantities to support jaguars. The PCEs are based on the latest jaguar habitat model produced by the Jaguar Recovery Team (Sanderson and Fisher 2013, entire), which is the best commercial and scientific data available. Further, all PCEs are found in all units of the final critical habitat designation and jaguars have been documented in each unit (in some cases multiple times over multiple months and years). Therefore, we conclude that all of the critical habitat units contain all of the PCEs in the appropriate quantities to support jaguars.

(128) Comment: It is not necessary to have all of the PCEs in each critical habitat unit. The Service should consider designating areas in which only some of the PCEs are present.

Our response: The Service recognizes that each critical habitat unit does not need to contain all of the PCEs; however, the Service considered the fact that this area is in the northern periphery of the jaguar's range. Designating critical habitat only in areas with all PCEs provides the best habitat available and, therefore, critical habitat for the jaguar in the United States. Because habitat in the United States is at the edge of the species' northern range, and is marginal compared to known habitat throughout the range, we have determined that all of the primary constituent elements discussed must be present in each specific area to constitute critical jaguar habitat in the United States, including connectivity to Mexico (but that connectivity may be provided either through a direct connection to the border or by other areas essential for the conservation of the species; see *Areas Essential for the Conservation of Jaguars,* above). Further, because the PCEs are based on recommendations from the Jaguar Recovery Team and information from the latest jaguar habitat model (Sanderson and Fisher 2013, entire), we have captured the areas in the United States that support the conservation of the jaguar.

(129) Comment: The unoccupied units (specifically Subunit 4b) lack the essential physical and biological features for critical habitat.

Our response: The Service recognizes that three designated critical habitat Subunits (1b, 4b, and 4c) do not contain all of the physical or biological features essential to the jaguar. However, under the second part of the definition of critical habitat under the Act, 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. The Act does not require the Service to identify PCEs for unoccupied areas. In areas lacking all PCEs (specifically Subunits 1b, 4b, and 4c), these areas were designated because they are essential to the conservation of the jaguar because they provide continuity to Mexico and connect Subunits within the United States that would otherwise not be connected to Mexico (Subunits 1a and 4a).

(130) Comment: Additionally, the Service failed to meet Data Quality Act (DQA) standards. The DQA attempts to ensure that Federal agencies, such as the Service, use and disseminate accurate information by requiring those agencies to issue information guidelines ensuring the quality, utility, objectivity, and integrity of the information disseminated. The information disseminated by the Service in the proposed rule fails to meet DQA standards because it is both biased and inaccurate.

Our response: See our responses to comment numbers 16 and 18 in *Peer Reviewer Comments* above.

(131) Comment: The Service must adopt ''regulatory *Daubert''* by informal rulemaking to prevent further subordination of science to political policy (Holland 2008).

Our response: The commenter's reference to *Daubert* in Holland (2008, p. 301) refers to the *Daubert v. Merrell Dow Pharmaceuticals, Inc.* case that was decided by the Supreme Court. In *Daubert* v. *Merrell Dow Pharmaceuticals Inc.,* the U.S. Supreme Court empowered federal judges to reject irrelevant or unreliable scientific evidence. *Daubert* provides a suitable framework for reviewing the quality of agency science and the soundness of agency decisions consistent with the standards established for review of agency rulemakings under the Administrative Procedure Act. Holland (2008) suggests that the Act should be held to a similar information standard that was used in that case, either through adoption by Federal courts, Congressional amendment to the Act, or Executive Order. The Service has no authority to adopt information standards different than those referenced in the discussion above. These are the standards that we used in the designation of critical habitat for the jaguar.

(132) Comment: The questionnaires distributed by the Service to jaguar experts for use in developing the recovery outline for the species and the application of the Delphi Method (a structured communication technique using a systematic, interactive forecasting method which relies on a panel of experts) are scientifically invalid.

Our response: The use of questionnaires and the Delphi Method is not a scientifically invalid process. The Delphi Method can be a useful technique in solving complex natural resource issues by synthesizing expert opinion (for example, see Hess and King 2002, entire; Taylor and Ryder 2003, entire; Plummer and Armitage 2007, entire), particularly when data are lacking, there is great uncertainty, and the primary source of information is informed judgment (Hess and King 2002, p. 28). This is the case for jaguars in the northwestern-most part of the species' range. For this reason, we determined that a modified Delphi Method (in that we sent one round instead of multiple rounds of questions to scientists with experience or expertise in jaguar ecology (primarily in the northwestern-most portion of the jaguar range) or large cat ecology) was appropriate to determine the habitat features relied on by jaguars in this area. Please see the Recovery Outline for the Jaguar for a description of this process (Jaguar Recovery Team 2012, pp. 15–16).

(133) Comment: ''Data'' resulting from a compilation of animals either lured here artificially by sexual scent baiting or trapped elsewhere and then released, do not support any scientific conclusion of authentic habitat and run afoul of the ethics requirements of biological science and of the Service.

Our response: The Service used the best available science to determine critical habitat for the jaguar. We understand that some of the jaguar records may be disputed due to the

possibility that female scat was used as a scent lure in some areas, or that some individuals may have been released for ''canned'' hunts. Therefore, we removed all sightings that may have been influenced by female scat, which we determined to be from October 3, 2008 (the date of Emil McCain's request for jaguar scat from the Phoenix Zoo), through March 2, 2009 (the date Macho B was captured and flown to the Phoenix Zoo), and we did not use records that may have been from ''canned'' hunts (Johnson *et al.* 2011, p. 9). See Table 1 of this final rule for all of the undisputed Class I jaguar records used to determine occupancy.

(134) Comment: The Service has given insufficient consideration of competition for hunting territories or of availability of prey species that would occur in the critical habitat areas if jaguars were to actually inhabit the proposed critical habitat. Any increase in predator population would necessarily create an imbalance in that relationship (e.g., an increase in predator population without an increase in prey population due to expansion of jaguar population).

Our response: The designation of critical habitat does not increase the number of jaguars present in the United States. Designated 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. As discussed in the proposed rule and this final rule, the purpose of designating critical habitat in the United States is to provide areas for transient jaguars (with possibly a few residents) to support the nearest breeding area to the south in Mexico, allowing this population to expand and contract, and, ultimately, recover. It is our intent that the designation of critical habitat will protect the functional integrity of the features essential for jaguar life-history requirements for this purpose into the future.

(135) Comment: The range of HII included in the Service's August 20, 2012, proposed rule is too restrictive and should be increased. The primary constituent elements of jaguar critical habitat should include areas with an HII of up to 30, if not more.

Our response: The range of HII included in this final rule (less than 20) is appropriate. To the greatest extent possible, we have based jaguar critical habitat, including the PCE for HII, on information compiled and produced by the Jaguar Recovery Team. The Jaguar Recovery Team comprises jaguar experts, large-cat experts, and stakeholders from the United States and Mexico; therefore, we consider that the work produced by the team is the best available scientific and commercial data, and that following the team's recommendations is the best avenue to conservation of the species and by extension designating critical habitat. Therefore, we have incorporated the team's recommendation for HII in the northern portion of the proposed Northwestern Recovery Unit as a PCE for jaguar critical habitat.

(136) Comment: In developing the PCE of human influence, the Service assumes that human influence has not changed over the time period of jaguar records used in the analysis. Clearly human population density, the location and traffic density of major roads, and the extent of stable nighttime lighting (three examples of human influence on which this PCE is based), have changed over the last century. By using the HII GIS layer, the Service could grossly miscalculate the habitat characteristics associated with jaguar locations from the early to mid-20th century, including overestimating the degree of human influence that jaguars prefer. The Service should use historical records to estimate human influence associated with jaguar locations throughout the 20th century. Without a proper correction for temporal variation in HII, the GIS approach taken by the Service to develop and map PCEs is fundamentally flawed and inappropriate.

Our response: The Service recognizes the temporal variation in human influence over the time period of jaguar records used in the analysis. However, as stated previously, the Act requires the Service to use the best scientific and commercial data available. Data pertaining to the variation of human influence from 1962 to present is lacking.

(137) Comment: The Service does not account for the high level of current and historic human activity within the northern Santa Rita Mountains. As a result of mining operations in the Greaterville, Rosemont, and Helvetia areas, the areas surrounding the proposed Rosemont Project have been subject to relatively high levels of human activity for over one and a half centuries. Given the close proximity of the northern Santa Rita Mountains to the second largest metropolitan area in Arizona and the area's proximity to State Highway 83, the area currently receives heavy human use. In particular, the areas within and surrounding the Rosemont Project do not contain the necessary PCE associated with low human influence, and thus should not be included in the proposed designation of critical habitat for jaguar.

Our response: We understand there may be discrepancies due to the mapping scale of HII (1 km^2 (0.4 mi^2)), and have accounted for this in the textual exclusion of paved or developed areas that may have been included in the critical habitat boundary because of this scale. However, overall HII is the best available science consistently and objectively reflecting human influence on the landscape, and therefore we continue to use it as the data source for the human influence PCE. The critical habitat designation consists entirely of rural lands, in variously low levels of development and population density. All the units are in counties with population densities lower than their statewide average, with the exception of Pima County, which includes the city of Tucson.

(138) Comment: If the Service designates critical habitat, a de facto wilderness will be created and people and activities will be excluded from critical habitat.

Our response: Designated critical habitat does not create a wilderness area, reserve, or otherwise protected area. Humans and legal activities are not excluded from designated critical habitat. Legal activities that have a Federal nexus (in that they occur on Federal lands, require a Federal permit, or receive Federal funds) will be evaluated on a case-by-case basis with respect to section 7 (consultation with the Service) of the Act to ensure they do not destroy or adversely modify designated critical habitat.

(139) Comment: Human influence appears to be above the defined threshold within the proposed rule in the northern Santa Rita Mountains and should not be included in the proposed designation of critical habitat for the jaguar. The GIS layer identified in the jaguar habitat model entitled ''Human Footprint,'' available from Socioeconomic Data and Applications Center, does not fit the description provided in the proposed rule as it is not a relative index normalized by biome and its scores range from 0 to 64. When brought into a GIS, the Human Footprint layer (which fits the description provided in the proposed rule) clearly demonstrates that human influence is high across a large area proposed as critical habitat, including all of the northern Santa Rita Mountains and the entirety of the Rosemont Project located within the proposed designation, as well as Subunit 4b. Thus, according to the thresholds set

forth by the proposed rule, the northern Santa Rita Mountains and the areas within and surrounding the Rosemont Project should not be included in the proposed designation as they do not include the necessary PCEs.

Our response: In our August 20, 2012, proposed rule (77 FR 50214), we incorrectly identified the Human Footprint (which is measured on a scale of 0–100) available through Socioeconomic Data and Applications Center as the GIS layer used to evaluate human influence. We did not use the Human Footprint data, but rather the Human Influence Index (which is measured on a scale of 0–64). The Human Influence Index is the data layer used in both jaguar habitat models developed by Sanderson and Fisher (2011, p. 7; 2013, p. 6) and used to designate critical habitat for the jaguar. We have corrected this final rule to reflect the appropriate data layer.

The Service utilized the Human Influence Index GIS layer, which is based on eight input layers (human population density, railroads, major roads, navigable rivers, coastlines, stable nighttime lighting, urban polygons, and land cover) to describe a relative index of human influence on the land. This GIS layer is available from the Socioeconomic Data and Applications Center hosted by the Center for International Earth Science Information Network at Columbia University (*http://sedac.ciesin.columbia.edu/data/collection/wildareas-v2/sets/browse*). Please see our response to comment number 43 for a comprehensive list of all data sources we used in our analysis.

(140) Comment: Because approximately 35 percent of the areas proposed as critical habitat are non-federal lands, many of the areas currently associated with high human influence could experience additional human impacts from future development. Critical habitat affords no protection to actions on private or state lands that do not require federal actions, and thus does little to alleviate this problem. Because of the importance placed on the PCE of low human influence by the proposed rule, areas currently associated with high human influence should not be included in the proposed designation.

Our response: We have not included areas within critical habitat with high human influence. In the proposed rule and this final rule we have identified an HII of less than 20 as an essential PCE of critical habitat. We understand there may be discrepancies in some cases due to the mapping scale of HII (1 km^2 (0.4 mi^2)), and we have accounted for this in the textual exclusion of paved or developed areas that may have been included in the critical habitat boundary because of this scale.

We understand that additional human impacts from future development on private or State lands could occur. However, critical habitat does afford some protection to the jaguar through section 7 consultation under 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. 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. Therefore, actions that are funded, permitted, or carried out by a Federal agency within jaguar critical habitat will continue to be evaluated to determine their impacts on critical habitat.

(141) Comment: Climate change is a factor affecting jaguar adaptation and conservation, and the Service should include lands at higher elevations and latitudes in the critical habitat designation. The Service should consider that climate change will force species, such as jaguars, to migrate north, and designating critical habitat for the jaguar in the United States is necessary.

Our response: The Service considered numerous scientific information sources as cited in our proposed rule and this final rule. The Service agrees that the best available scientific information shows unequivocally that the Earth's climate is currently in a period of unusually rapid change and the impacts of that change are already occurring (National Fish, Wildlife, and Plants 2012, p. 9). The Service recognizes that some species are shifting their geographic ranges, often moving poleward or upwards in elevation (National Fish, Wildlife, and Plants 2012, p. 10). Range shifts are not always negative: Habitat loss in one area may be offset by an increase elsewhere such that if a species is able to disperse, it may face little long-term risk. However, it is clear that shifting distributions can lead to a number of new challenges (National Fish, Wildlife, and Plants 2012, p. 26). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah and Lovejoy 2005, p. 4). The Service acknowledges in the proposed rule and this final rule that climate change has the potential to adversely affect the jaguar within the next 50 to 100 years (Jaguar Recovery Team 2012, p. 32). However, the degree to which climate change will affect jaguar habitat in the United States is uncertain. Further, we do not know whether the changes that have already occurred have affected jaguar populations or distribution, nor can we predict how the species will adapt to or be affected by the type and degree of climate changes forecast. Consequently, because the specific impacts of climate change on jaguar habitats remains uncertain at this time, we did not recommend that any areas be designated as critical habitat specifically to account for the negative effects of climate change.

(142) Comment: It is inappropriate for the Service to address climate change within the critical habitat designation area for the jaguar because of the lack of data or accurate down-scaled climate modeling. Climate change information from the IPCC is flawed; therefore, the Service should not consider it.

Our response: See our response to comment number 59 in *Comments from States* above.

(143) Comment: The Service received multiple comments regarding climate change. Some thought there was not sufficient information on climate change for the Service to determine impacts to the jaguar. Others thought that there is more than enough information on impacts from climate change, which the Service did not adequately consider.

Our response: As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We reviewed all available information pertaining to climate change and the jaguar, but climate change data specific to jaguars or similar species is scarce. The Service recognizes that the best available scientific information shows unequivocally that the Earth's climate is currently in a period of unusually rapid change and the impacts of that change are already occurring (National Fish, Wildlife, and Plants 2012, p. 9). However, because the specific impacts of climate change on jaguar habitats remain uncertain at this time, we did not recommend any areas be designated as critical habitat specifically to account for the negative effects of climate change. Please see our response to comment number 33 in *Peer Reviewer Comments* above.

(144) Comment: The Service should not consider climate change because it is not certain to occur, or may not occur to the severity that is predicted by experts.

Our response: Please see our response to comment number 59 in *Comments from States* above.

(145) Comment: Clarify if highways and the City of Sierra Vista were excluded from critical habitat designation.

Our response: Yes, these areas are not included in the critical habitat designation. When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, roads, cities, and other structures because such lands lack physical or biological features for jaguars. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

(146) Comment: The Service did not adequately analyze whether or not critical habitat areas would require special management of the physical and biological feature and PCEs. Areas that are managed in a way that maintains the physical or biological features essential to the species do not meet the statutory definition of critical habitat and, therefore, are not eligible to be designated as critical habitat. The proposed rule does not contain these findings. Instead, the proposed rule contains broad generalizations regarding threats to the species and pronounces that special management is needed to address the threats without assessing whether existing protections are adequate.

Our response: The Act does not require that the Service evaluate the inadequacy of existing regulatory mechanisms for critical habitat designation. The Act requires the Service to analyze this factor to determine whether a species is endangered or threatened. Under the Act critical habitat is defined as the geographical area occupied by the species at the time of listing that contains those physical or biological features that: are essential to the conservation of the species and which ''may'' require ''special management'' considerations or protection. It does not state that critical habitat contain those physical or biological features where ''additional'' special management is ''needed''. In *Center for Biological Diversity* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. Jan. 13, 2013), the court stated that the fact that habitat is already under some sort of conservation management indicates that such habitat is critical. Therefore, special management considerations or protection of the habitat features comprising jaguar critical habitat may be necessary.

(147) Comment: Special management of jaguar critical habitat is not required because of the cooperative management efforts and achievements of the Jaguar Conservation Team. Additionally, the Arizona Game and Fish Department and New Mexico Department of Game and Fish, with assistance from the Service and other cooperators, have already carefully crafted a Memorandum of Understanding and Conservation Framework to maintain the jaguar's core commitments in several areas of conservation; therefore, no special management is required.

Our response: We appreciate and acknowledge the work conducted by the Jaguar Conservation Team and the States since 1997. However, as stated in our response to comment number 60 in *Comments from States* above and comment number 146 in *Public Comments* above, special management considerations or protection of the habitat features comprising jaguar critical habitat may be necessary.

(148) Comment: Special management along the border could be waived to address national security issues.

Our response: We understand that laws related to the expeditious construction of border infrastructure in areas of high illegal entry may be waived by the Secretary of DHS, and we have discussed this issue in the *Special Management Considerations or Protections* section of this final rule. As also noted in this final rule, we know of no plans to construct additional security fences in the designated critical habitat, although should future national security issues require additional measures, the Secretary of DHS may invoke the waiver, and special management considerations would continue to occur on a voluntary basis on activities covered by a waiver. Other forms of border infrastructure, however, do not fall under this waiver (construction of towers, for example); therefore, special management considerations apply to these projects, and we consult with DHS to minimize the impacts to listed species and their critical habitat.

(149) Comment: McCain and Childs (2008) misstate the total number of jaguar records in the United States, incorrectly calculate percentages based on these records, and improperly round their results to create the false illusion of an extinction crisis in the United States.

Our response: We disagree. We have reviewed McCain and Childs (2008) and did not find there to be misstatements and miscalculations in the report. Additionally, McCain and Childs (2008) is a peer-reviewed article published in a reputable journal (Journal of Mammalogy). Therefore, we continue to utilize information in this article as some of the best available science.

(150) Comment: The recovery outline for the jaguar states that water for jaguars must be made available within 10 km (6.2 mi) year round for ''high quality'' jaguar habitat to exist in the American Southwest and within 20 km (12.4 mi) by use of this rule everywhere else in the area proposed as critical habitat for jaguar. This water requirements for jaguars described in the proposed rule raise water resources issues that require active cooperation between the Service and local governmental entities to resolve in concert with the development of critical habitat for the jaguar under section 2(c)(2) of the Act. The Service has refused, and is continuing to refuse, to resolve water resource issues associated with the designation of critical habitat for jaguar.

Our response: We recognize our responsibilities under section 2(c)(2) of the Act to cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species, such as the jaguar. We look forward to working with the water resource agencies to resolve any such issues. However, this cooperation is, for the most part, independent of our requirement under section 4(a)(3)(A) of the Act to designate critical habitat for the jaguar. Impacts to water management and resource activities are not expected to be controversial because, as discussed in the analysis of impacts on water resources, the constraints on current water management activities are expected to be limited (Mangi Environmental Group 2013).

(151) Comment: Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), explicitly states that our ''regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'' Consistent with this mandate, Executive Order 13563 requires agencies to tailor ''regulations to impose the least

burden on society, consistent with obtaining regulatory objectives.'' It also requires agencies to ''identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice'' while selecting ''those approaches that maximize net benefits.'' To the extent permitted by law, our regulatory system must respect these requirements.

Our response: We have followed, and will continue to follow, the directives in Executive Order 13563. As part of the process to designate critical habitat, we have completed an economic analysis on the potential incremental impacts of the designation. Critical habitat only affects Federal actions through a requirement to consult on those actions that may affect critical habitat to ensure they do not adversely modify critical habitat.

(152) Comment: Lands within the critical habitat areas already have land protection due to Federal or Tribal ownership or local land management plans. In contrast, we also received comments stating that the lands within critical habitat areas are not protected adequately for jaguar conservation.

Our response: We recognize that some lands within the designation are already being managed for conservation purposes that provide some benefits to the jaguar. Section 4(b)(2) of the Act states the Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In the proposed rule we acknowledge that some areas within the proposed designation are included in management plans or other large-scale habitat conservation plans including the Forest Service, National Park Service, Fish and Wildlife Service refuge, Bureau of Land Management, Malpai Habitat Conservation Plan, Pima County's Draft Multi-Species HCP, State Wildlife Action Plans, and Jaguar Conservation Agreements between the Arizona Game and Fish Department and New Mexico Department of Game and Fish. However, these plans do not specifically address jaguar habitat.

In the proposed rule we noted that we were considering exempting Fort Huachuca and excluding the Tohono O'odham Nation. We have reviewed the comments from the public on these matters. We have determined that the benefits of excluding the Tohono O'odham Nation outweigh the benefits of inclusion. In regards to Fort Huachuca, the Service has exempted Fort Huachuca from critical habitat designation based on their INRMP. See the *Exemptions* and *Exclusions* sections of this final rule for additional information.

(153) Comment: The jaguar is already protected in the United States by both Federal and State laws.

Our response: The jaguar does already receive some protection under the Act as a Federally listed species. However, the Service has determined that designation of critical habitat for the jaguar is prudent and determinable based on the best available scientific data available. Section 4(a)(3)(A) of the Act states that critical habitat shall be designated for endangered and threatened species to the maximum extent prudent and determinable. Therefore, we are required to designate critical habitat for the jaguar to fulfill our legal and statutory obligations. See our response to comment number 1 in the *Peer Reviewer Comments* above. Further, critical habitat does afford protection to the jaguar through section 7 consultation under 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. 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. Therefore, actions that are funded, permitted, or carried out by a Federal agency within jaguar critical habitat will continue to be evaluated to determine their impacts on critical habitat.

(154) Comment: The primary threat to jaguars is through hunting and other activities that ''take'' individuals, not habitat fragmentation.

Our response: As discussed in the *Special Management Considerations or Protections* section of this final rule, there are threats to the physical or biological feature essential to the conservation of jaguar habitat that may require special management. Jaguar habitat and the features essential to their conservation are threatened by the direct and indirect effects of increasing human influence into remote, rugged areas, as well as projects and activities that sever connectivity to Mexico. In the past, the primary threat to jaguars in the United States was illegal shooting (see listing rule for a detailed discussion); however, this is no longer accurate, as the most recent known shooting of a jaguar in Arizona was in 1986 (Brown and Lopez González 2001, p. 7). Please see the 1997 clarifying rule (62 FR 39147; July 22, 1997) and the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, entire) for more information about threats to jaguars.

(155) Comment: The designation of private lands as critical habitat will affect private property rights. Specifically, designated critical habitat will limit the use and enjoyment of the property, impact ongoing maintenance and improvement, limit or modify ranching practices, and curtail other legal uses of the property. Designating critical habitat for the jaguar will result in regulatory takings of an individual's livelihood and, ultimately, his or her property.

Our response: As stated in our proposed rule, the Service has followed Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''). The designation of jaguar critical habitat is not anticipated to have significant takings implications for private property rights. As discussed in the Critical Habitat section of this final rule, the designation of critical habitat affects only Federal actions. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. Due to current public knowledge of the species' protections and the prohibition against take of the species both within and outside of the proposed areas, we do not anticipate that property values would be affected by the critical habitat designation. Our economic analysis for proposed critical habitat designation found only limited incremental impacts of the designation and extremely small impacts on activities on private lands.

(156) Comment: It was inappropriate to use roads as a natural boundary to designate jaguar critical habitat.

Our response: We did not use roads as a natural boundary to designate critical habitat. Instead, critical habitat units are defined by the PCEs around which they are based, one of which includes roads as part of the human influence on the landscape (the Human Influence Index), but the use of roads in the definition of critical habitat units is only to give context to the location of the unit, not as the official unit

description. See the maps for the official boundaries themselves.

(157) Comment: The Service should acknowledge that new jaguar observations within the United States could lead to revisions in the designation of critical habitat.

Our response: We acknowledge that the Act authorizes the Service to make revisions to designated critical habitat. If in the future the best available information at that time indicates revision of critical habitat is appropriate, and if resources are available we may revise this critical habitat designation.

(158) Comment: The Service incorrectly stated that jaguars in the United States and northwestern Mexico represent the northernmost extent of the jaguar's range, with populations persisting in distinct ecological conditions demonstrated by xeric (extremely dry) habitat that occurs nowhere else in the species' range (Sanderson *et al.* 2002, entire). Sanderson *et al.* (2002, p. 64) does briefly mention the persistence of the populations in arid regions in Sonora, but also identifies areas in Venezuela and Brazil as xeric habitat that jaguars currently inhabit (Sanderson *et al.* 2002, Table 2). The populations in Venezuela and Brazil have shorter and more numerous corridors to connect populations in this area, thus facilitating gene flow. This contradicts the Service's assertion that jaguars in the United States are important sources of genetic resources, and, therefore, connectivity to Mexico is essential to the conservation of the jaguar.

Our response: We have modified this language in this final rule. See the *Jaguar Recovery Planning in Relation to Critical Habitat* section above in this final rule.

(159) Comment: The Service provided no evidence that population genetic resilience or persistence will be improved for jaguars by designating critical habitat in the United States. No empirical evidence was presented in the proposed designation that jaguars observed in the United States represent a genotype different from the closest breeding population of jaguars 209 km (130 miles) to the South in Mexico.

Our response: As described in this final rule, jaguars in the United States and northwestern Mexico represent the northernmost extent of the jaguar's current range, representing a population persisting in one of only four distinct xeric (extremely dry) habitats that occur within the species' range (Sanderson *et al.* 2002, Appendix 1). We did not determine that jaguars in the United States represented a different genotype than those from the closest breeding population in Mexico; rather, jaguars in the United States are likely dispersing from the nearest breeding population in Mexico, and the conservation role or value of jaguar critical habitat is to provide areas to support these individuals during transient movements by providing patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit.

(160) Comment: The critical habitat designation and the direction outlined in the Recovery Outline relies on connectivity to Mexico for the recovery of jaguars, but this connectivity may be impacted by current and potential future border security efforts, primarily efforts to secure the international border with Mexico through the use of various types of fencing, towers, lighting, and roads. The Service incorrectly presumes that border security infrastructure will not continue.

Our response: We acknowledge that there may be some potential impacts related to border security infrastructure and maintaining habitat connectivity for jaguars between the United States and Mexico. However, as indicated in the proposed rule and this final rule, there are critical habitat areas that are not impacted by existing border infrastructure and which continue to provide habitat connectivity to Mexico. These areas are typically very steep and rugged and not conducive to the construction of fences or roads. We do not anticipate that additional fencing or roads will be constructed in designated critical habitat due to the prohibitive cost and engineering constraints. If such projects are proposed, the designation of critical habitat will provide a regulatory layer of evaluation that will allow us to work with Federal agencies and landowners to resolve issues related to border security, but also ensure that the elements of jaguar critical habitat are maintained and functioning to the extent that the law allows, and that will facilitate cross-border movements by jaguars.

(161) Comment: Critical habitat designation along the U.S.-Mexico border is in conflict with national security and continued border security efforts and is not prudent. It appears that the Service wants to stop the Border Patrol from protecting our borders, restrict or completely halt road widening and construction of roadways, powerlines, pipelines, etc., and restrict or completely halt all mineral extraction and mining.

Our response: We do not anticipate that the designation of critical habitat for the jaguar will prevent the implementation of solutions that address national security. Further, environmental laws and regulations related to the expeditious construction of border infrastructure in areas of high illegal entry may be waived by the Secretary of DHS. We will continue to comply with directives related to border security and work with the Federal agencies involved in border security through existing processes, including section 7 consultation. If the consideration of environmental laws and regulations is waived in order to address national security, we will continue to work with the Federal agencies to incorporate measures into infrastructure design and construction that will avoid or minimize effects of these actions on jaguar habitat connectivity. In regards to the designation of critical habitat not being prudent, see our response to comment number 1 in the *Peer Reviewer Comments* above.

(162) Comment: Existing agreements, such as the Memorandum of Understanding (MOU) between the Coronado National Forest (CNF) and Customs and Border Protection (CBP), are adequate to resolve environmental issues and reduce impacts to national security, and there is no need for the designation of critical habitat for the jaguar.

Our response: Based on the best available scientific data available, the Service has determined that designation of critical habitat for the jaguar is prudent and determinable. See our response to comment number 1 in the *Peer Reviewer Comments* above.

(163) Comment: The Service should not exclude mining claims from critical habitat. The Service should forbid mining within critical habitat. All PCEs (and particularly connectivity to Mexico) will be impacted by mining, causing further habitat fragmentation.

Our response: We are not excluding mining claims from critical habitat. Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. See our response to comment number 64 above in *Comments from States* for discussion on exclusions, and see our response to comment number 71 in *Public Comments* for discussion on excluding the Rosemont Mine. Rather, all projects with a Federal nexus proposed within jaguar critical habitat in the United States will be evaluated on a case-by-

case basis with respect to section 7 of the Act.

The conservation value of the Rosemont Mine area is important to the jaguar for maintaining connectivity with the other critical habitat units and with Mexico. Regarding the Hermosa project, although it is too early to begin a section 7 consultation because the project is still in the early planning stages, the economic impacts are expected to be much the same as for Rosemont Mine. The Hermosa project is in the same occupied unit and, therefore, incremental costs are expected to be low. The conservation value of this area for the jaguar may be even greater than for the Rosemont area because the Hermosa project is only 9 miles north of the U.S.-Mexico border, meaning that this area is very important for maintaining connectivity to Mexico.

Unlike more permanent habitat alterations such as building construction and asphalt paving, mines are temporary habitat disturbances and their effects can be mitigated following their economic lifespan. The economic life of Rosemont Mine is forecast to be 21 years, after which time conservation measures such as restoration of surface springs and revegetation of the mine reclamation area would take place. The Rosemont Mine area of critical habitat can be an important tool for promoting conservation of the jaguar and will continue to have conservation value for the species post-reclamation.

(164) Comment: The essential element of water within 20 km (12.4 mi) of each other is not met without relying on livestock water tanks created on ranch lands.

Our response: We acknowledge that in some cases water sources may be stock tanks, which may be used by any number of wildlife, including jaguars. Many stock tanks, however, are not included in the USGS NHD data layer, and other sources of water are available across the landscape, as well. We also understand that the availability of water across the landscape during the year is variable, based on a variety of climatic factors and ranch management practices. Even with the variability, and the fact some water sources may be provided by stock tanks, the best available scientific data provided by the USGS NHD data layer indicates that there is sufficient water available for jaguars within the final critical habitat designation.

(165) Comment: Jaguars and livestock ranching are not compatible.

Our response: The jaguar is already present in the United States (see Table 1 in this final rule) and protected under the Act as a listed species. Designation of critical habitat does not change the status of the species, nor does it imply that we are proposing to introduce jaguars into these areas or that critical habitat is being designated with the expectation that a jaguar population will eventually reside in these areas. As discussed in the proposed rule and this final rule, the purpose of designating critical habitat in the United States is to provide areas for transient jaguars (with possibly a few residents) to support the nearest breeding area to the south, allowing this population to expand and contract, and, ultimately, recover. It is our intent that the designation of critical habitat will protect the functional integrity of the features essential for jaguar life-history requirements for this purpose into the future.

In terms of cattle depredation due to jaguars, we understand this may occur, and are aware of one recent (2007) jaguar depredation event in the United States in the Altar Valley area (McCain and Childs 2008, pp. 4–5). The designation of critical habitat does not alter or increase this possibility. We are aware, however, of the concern that cattle depredations may occur in the future, and we are working with the Jaguar Recovery Team to develop strategies to avoid these types of conflicts. We will include these strategies and actions in the draft Recovery Plan for the Jaguar.

In addition, 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. See the Critical Habitat section of this final rule for further information on critical habitat designation.

(166) Comment: The Service should increase the range of canopy cover used to delineate critical habitat (which was 3–40 percent in the proposed rule).

Our response: In the revised rule and this final rule the Service increased the range of canopy cover to greater than 1 to 50 percent tree cover. Sanderson and Fisher (2011, p. 7; 2013, pp. 5–6) also added a digital layer to capture canopy cover (called land cover in the reports), as represented by a digital layer called tree cover. In the latest version of the model (version 13), Sanderson and Fisher (2013, p. 20) analyzed the tree cover preferred by jaguars in the Jalisco Core Area (the southernmost part of the Northwestern Recovery Unit) separately from tree cover in all other areas (note that p. 15 of this report incorrectly states that the Sinaloa Secondary Area is included with the Jalisco Core Area in this analysis) to reflect the major habitat shift from the dry tropical forest of Jalisco, Mexico, to the thornscrub vegetation of Sonora, Mexico. The results of these analyses indicate that jaguars in the southernmost part of the Northwestern Recovery Unit (the Jalisco Core Area) seem to inhabit a wider range of tree cover values (greater than 1 to 100 percent), whereas jaguars throughout the rest of the Northwestern Recovery Unit (including the United States) appear to inhabit a narrower range of tree cover values (greater than 1 to 50 percent) (Sanderson and Fisher, p. 20).

(167) Comment: The designation should include biotic communities other than Madrean evergreen woodland and semidesert grassland.

Our response: To define the physical and biological features required for jaguar habitat in the United States, we are relying on information provided by the Jaguar Recovery Team, which we consider the best available science. This information was provided in two habitat modeling reports, Sanderson and Fisher (2011, pp. 1–11) and Sanderson and Fisher (2013, entire). Additionally (and as also described in our response to comment number 43 in *Comments from States* above), the Service analyzed a subset of recent, highly accurate jaguar locations from Mexico and the United States to determine if filtering the observations in this way would influence the frequency that these observations occurred across the range of habitat variables.

As described in our response to comment number 43 in *Comments from States* above, the results of our additional analysis indicate that the overall pattern in frequency of jaguar observations using these highly accurate locations relative to the habitat variables is similar to the patterns observed using the entire data set used for version 13 of the habitat model (Sanderson and Fisher 2013, entire). Specifically related to tree cover and biotic communities, 95 percent of these highly accurate locations are found in greater than 1 to 50 percent tree cover (for all jaguar observations except those in the southernmost part of the Northwestern Recovery Unit), and, within the United States, 95 percent (of the 44 locations

total within the United States) are within Madrean evergreen woodland (43 percent) and semidesert grassland (52 percent). Therefore, we determine that a tree cover of greater than 1 to 50 percent, and biotic communities described as Madrean evergreen woodland and semidesert grassland, comprise the vegetation PCE of the physical or biological feature for jaguar critical habitat.

(168) Comment: The Service should include higher elevation areas as critical habitat.

Our response: As described in this final rule, we did not include areas higher than 2,000 m (6,562 ft) in elevation because information provided by the Jaguar Recovery Team, which we consider the best available science, indicates that areas above 2,000 m (6,562 ft) do not provide jaguar habitat, as only 3.3 percent (15 of 453) of the observations utilized in the most recent jaguar habitat modeling effort occur above this elevation (Sanderson and Fisher 2013, pp. 19, 29; note that p. 19 incorrectly states 20 observations above 2,000 m (6,562 ft) instead of 15, and Table 1.3 incorrectly states 452 jaguar observations total instead of 453). Consequently, our revised proposed rule and this final rule include an upper-elevation limit of 2,000 m (6,562 ft) to define jaguar critical habitat.

(169) Comment: Habitat conditions associated with jaguar locations may be inaccurate because the jaguar may have been chased to that location during a hunting event, and, therefore, the location may not represent the habitat in which it was residing.

Our response: The Service has used the best scientific and commercial data available as required by the Act. As described above, we determine that the range of tree cover included in the latest habitat model (Sanderson and Fisher 2013, entire) is not unreliable, and that the biotic communities of Madrean evergreen woodland and semidesert grassland provide the best, and, therefore, essential, jaguar habitat within the United States. See our response to comment number 43 in *Comments from States* above.

(170) Comment: Habitat conditions associated with jaguar locations may be inaccurate because we did not account for the temporal variation in habitat conditions across the timeframe of detections, and that we instead assume that current habitat characteristics of jaguar locations (such as canopy cover) are exactly the same as the characteristics present at the time of detection, whereas they likely are not. The Service should use Turner *et al.* (2003) as a reference for changes in vegetation characteristics in portions of the Southwest over time.

Our response: We investigated Turner *et al.* (2003), and, while informative, a method for consistently and objectively determining and mapping the temporal vegetation changes across the entirety of southern Arizona and southwestern New Mexico is not provided. Additionally, see our response to comment number 43 in *Comments from States* above.

(171) Comment: Habitat conditions associated with jaguar locations may be inaccurate because we excluded 30 percent of the 333 occurrences to find that 70 percent were in areas of 3 to 60 percent tree cover.

Our response: See our response to comment number 43 in *Comments from States* above.

(172) Comment: The Service should expand the categories of ruggedness considered as critical habitat to include more level and extremely rugged areas. Specifically, Sanderson and Fisher (2011) graphically depict approximately 112 occurrence records in areas of ''level,'' ''nearly level,'' and ''slightly rugged'' terrain, which is more than half of the approximately 208 occurrences in ''intermediately,'' ''moderately,'' and ''highly'' rugged terrain.

Our response: We determine that the range of terrain ruggedness categories included in the latest habitat model (Sanderson and Fisher 2013, entire) accurately reflects the best, and, therefore, critical, jaguar habitat in the United States. See our response to comment numbers 43 and 63 in *Comments from States* above.

(173) Comment: The Service should exclude areas within 6.5 km (5 miles) of a well-used road rather than 4.5 km (2.8 miles) as discussed in the proposed rule.

Our response: The Service did not use an exclusion area of 6.5 km (5 miles) or 4.5 km (2.8 miles) around well-used roads in the proposed rule, and we are not using such parameters in this final rule. In the proposed rule we evaluated the best available scientific data, including Zarza *et al.* (2007, pp. 107, 108), which reported that towns and roads had an impact on the spatial distribution of jaguars in the Yucatan peninsula, where jaguars used areas located more than 6.5 km (4 mi) from human settlements and 4.5 km (2.8 mi) from roads. However, we did not use this data to develop our PCE for human disturbance. The Service identified a PCE characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1 km^2 (0.4 mi^2) area. This is based on the HII used in the habitat model developed by Sanderson and Fisher (2011, pp. 5–11, 2013 p. 6). In the latest version of the habitat model (Sanderson and Fisher 2013, entire), jaguar habitat was partly defined by an HII of less than 20 in the northernmost part of the Northwestern Recovery Unit. Additionally (and as also described in our response to comment number 43 in *Comments from States* above), the Service analyzed a subset of recent, highly accurate jaguar locations from Mexico and the United States to determine if filtering the observations in this way would influence the frequency that these observations occurred across the range of habitat variables.

(174) Comment: Future roads and transmission lines could cause habitat fragmentation.

Our response: The Service recognizes that an increase in road density and human settlements tends to fragment habitat and isolate populations of jaguars and other wildlife (Noss *et al.* 1996 and Carroll *et al.* 2001, as cited by Menke and Hayes 2003, p. 12). However, in our economic analysis, no major roads or transmission lines were identified within jaguar critical habitat. Further, future road and transmission lines with a Federal nexus proposed within jaguar critical habitat in the United States will be evaluated on a case-by-case basis with respect to section 7 of the Act.

(175) Comment: Critical habitat units that are to provide continuous habitat within the United States and subunits that are to provide connectivity to Mexico are crossed by roads with high traffic volumes and do not meet the Service's PCEs.

Our response: The Service recognizes that jaguar critical habitat contains roads; however, the presence of roads does not preclude an area from meeting PCE 7, pertaining to human influence. PCE 7 is characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1 km^2 (0.4 mi^2) area. The PCE does not stipulate the complete absence of roads; rather the PCE stipulates no major roads over the specified area (see *http://sedac.ciesin.columbia.edu/data/set/wildareas-v2-human-influence-index-geographic/maps*).

(176) Comment: Jaguars avoid human disturbance but male jaguars readily cross roadways and areas of human activity. Areas of human disturbance and roads do not prevent jaguars from using these areas.

Our response: In our proposed rule, the Service recognizes that male jaguars have been documented near roads, but the data do not indicate that this is where the majority of jaguar sightings

occur. Studies have also shown that jaguars selectively use large areas of relatively intact habitat away from certain forms of human influence. The Act requires us to determine critical habitat based on the physical and biological features essential to the jaguar; we determined that the most recent habitat model (Sanderson and Fisher 2013, entire), which uses the human influence index, provides the best available scientific data to determine these features.

(177) Comment: The Service should consider the impacts of smaller roads on wildlife, which have been well documented, in regards to how small roads could impact jaguar critical habitat. In addition to negative impacts on wildlife, primitive roads damage soils, vegetation, air quality, water quality, and archeological artifacts, and introduce noxious, nonnative species into forests where they often out-compete native species. The environmental effects of roads, road density, and off-road recreational activity are not individual, but rather cumulative and synergistic because seemingly small, individual impacts may result in large-scale changes in the reproductive success and survival of organisms, thereby altering the ecology of an area.

Our response: While the Service did not specifically consider impacts of smaller roads, the Service used the human influence index (HII), which is characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-square-km (0.4-square-mi) area. This is based on the HII used in the habitat model developed by Sanderson and Fisher (2011, pp. 5–11, 2013 p. 6). In the latest version of the habitat model (Sanderson and Fisher 2013, entire), jaguar habitat was partly defined by an HII of less than 20 in the northernmost part of the Northwestern Recovery Unit. Additionally (and as also described in our response to comment number 43 in *Comments from States* above), the Service analyzed a subset of recent, highly accurate jaguar locations from Mexico and the United States to determine if filtering the observations in this way would influence the frequency that these observations occurred across the range of habitat variables.

The results of our additional analysis indicate that the overall pattern in frequency of jaguar observations using these highly accurate locations relative to the habitat variables is similar to the patterns observed using the entire data set used for the updated habitat model (Sanderson and Fisher 2013, entire). Specifically related to HII, 97 percent are located in areas where the HII is less than 20, which is the range of HII that the Jaguar Recovery Team determined to provide the best jaguar habitat in the northernmost portion of the proposed Northwestern Recovery Unit. Therefore, based on this information, we identify areas in which the HII calculated over 1-square km (0.4-square mi) is 20 or less as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States. These areas are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-square km (0.4-square mi) area. We consider that the human influence PCE, as determined by the Human Influence Index, adequately captures the impact of roads (see *http://sedac.ciesin.columbia.edu/data/set/wildareas-v2-human-influence-index-geographic/maps*).

(178) Comment: Since jaguar recovery in the United States is contingent upon recovery in Mexico, it is important to ensure that any United States Federal activities do not jeopardize the jaguar, adversely modify its habitat, or destroy its habitat in Mexico. To the extent that the Mexican Government has identified jaguar habitat that is critical to the species, the United States should incorporate that designation by reference in its critical habitat designation, as well as any eventual recovery plan for the species. And where an agency action could result in jeopardy or potentially adversely modify habitat in Mexico, that agency must consult with the Service.

Our response: We do agree that conservation of the jaguar and its habitat in Mexico is vital to its recovery. Therefore, we will continue to work with our partners in Mexico toward conservation of the species there. Our regulations for critical habitat designation (50 CFR 424.12(h)) specifically preclude designation of lands outside of the U.S. jurisdiction. Therefore, we did not designate any areas in Mexico as critical habitat. In addition, our section 7 consultation implementing regulations (50 CFR 402.01) limit the definition of an action to all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas. Therefore, we do not consult on Federal actions outside of these areas.

Exclusions and Exemptions

(179) Comment: The Service should exclude the City of Sierra Vista.

Our response: Critical habitat does not include developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological feature necessary for jaguars. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat.

(180) Comment: The interests of national security and economic stability outweigh benefits of critical habitat designation.

Our response: The Service has conducted an analysis of impacts to national security and economics. The results of this analysis indicate that designation of critical habitat will not affect national security or economics. A copy of the final economic analysis with supporting documents may be obtained by contacting the Arizona Ecological Services Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.* See the *Application of Section 4(b)(2) of the Act* section of this final rule.

(181) Comment: The Service should exclude Cochise County because the Cochise County Comprehensive Plan (amended in 2011) already provides habitat conservation for the jaguar making critical habitat unnecessary.

Our response: Critical habitat does not include developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological feature necessary for jaguars. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat.

(182) Comment: The Service should exclude the residential subdivision located east of State Highway 83 in Subunit 4b (formerly within Subunit 4b, now within Unit 3). Excluding these areas will not cause the species' extinction.

Our response: Critical habitat does not include developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological feature necessary for jaguars. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any

such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat.

NEPA

(183) Comment: The Service should complete a full environmental impact analysis because of the degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

Our response: The designation of critical habitat by the Service for the conservation of endangered species is not a precedent-setting action with significant effects. The agency has designated critical habitat for numerous other species.

(184) Comment: The Service should complete a full environmental impact analysis because the Service re-defines the time of listing as a 50-plus-year time period, which is arbitrary and capricious.

Our response: The time of listing (for the purpose of determining whether it can be properly considered critical habitat) has no relevance in evaluating impacts to the human environment. In the context of an environmental assessment, the evaluation of the impacts of critical habitat designation focuses on outcomes of the potential increase in section 7 consultations resulting from the designation, since the designation does not itself produce or authorize direct physical impacts. For the jaguar, the Service's classification of whether a particular area was occupied at the time of listing or not (for the purpose of determining whether it can be properly considered critical habitat) has no relevance to determining section 7 consultation outcomes and the impacts of critical habitat designation. Given the secretive and transient nature of the jaguar, Federal land managers currently take steps to protect the jaguar even without critical habitat in areas that are considered by the Service to be both occupied and unoccupied at the time of listing. In determining whether there is a possibility that a project or action would jeopardize the species, the Service considers what impact may occur to actual members of the species. In a section 7 context, it does not matter whether the area in question was occupied at the time of listing or whether it was occupied at a later time; the key question is whether the geographical area is occupied at the time the section 7 consultation is conducted. Therefore, because of current Federal land management practices, the Service does not anticipate that designation of critical habitat would result in consultations that would not otherwise take place for jeopardy analysis in all designated critical habitat areas.

(185) Comment: The draft environmental assessment is inadequate because it fails to consider reasonable alternatives submitted by the public and provide reasons for eliminating these recommendations from further study.

Our response: Although section 102 (C)(iii) of NEPA requires us to consider alternatives to the proposed action, we are not required to consider every possible alternative. Rather, we consider a reasonable range of alternatives, which include those considered to be practical and feasible from a technical standpoint. The environmental assessment evaluates the environmental effects of three alternatives. These alternatives include the no action alternative (no designation of critical habitat), designation of critical habitat in all areas that meet the definition of critical habitat, and designation of critical habitat in all areas where the benefits of exclusion do not outweigh the benefits of inclusion. We are required to consider the ''no action'' alternative, and the two action alternatives are the only feasible alternatives that we consider under NEPA while still meeting our requirements under the Endangered Species Act. Therefore, the range of alternatives we considered in the environmental assessment is adequate under the procedural requirements of NEPA and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1518).

(186) Comment: The draft environmental assessment is inadequate because it fails to meet the NEPA standard of balanced multiple use management.

Our response: There is not a balanced multiple use management standard under NEPA.

(187) Comment: The draft environmental assessment is inadequate because it fails to analyze impacts on the human environment.

Our response: The draft environmental assessment does analyze impacts to the human environment and is adequate. 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. 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). Context refers to the setting of the proposed action and potential impacts of that action. The context of a significance determination may be society as a whole (human, national), the affected region, the affected interests, or the locality. Intensity refers to the severity of the impacts. Under regulations of the Council of Environmental Quality (CEQ), which is responsible for ensuring compliance with NEPA, intensity is determined by considering 10 criteria (40 CFR 1508.27(b)). See chapter 4 of the draft environmental assessment for a list of these 10 criteria. Based on the draft environmental assessment, the designation of critical habitat for the jaguar will not have significant impacts on the human environment.

(188) Comment: The draft environmental assessment is inadequate because it fails to accurately classify recreational use of most critical habitat.

Our response: In the environmental assessment we recognize that recreational areas in the proposed critical habitat exist on tribal lands (Tohono O'odham Nation); Federal and State-owned lands, including Coronado National Forest, BLM lands, Buenos Aires National Wildlife Refuge (NWR), Coronado National Memorial, and Arizona State lands. Further, we identify several types of recreational activities that take place in or near proposed critical habitat areas for the jaguar, such as hiking, hunting, boating, swimming, birding, wildlife viewing, photography, sight-seeing, pleasure-driving, angling, camping, horseback riding, and off-highway vehicle use. Level of use and type of activity vary by site characteristics, landownership, management policy, and accessibility. The National Visitor Use Monitoring program provides estimates of the volume and characteristics of recreation visitation to the National Forest System. A National Forest Visit is defined as the entry of one person upon a national forest to participate in recreational activities for an unspecified period of time. The most recent annual visitation data estimates 2,793 annual visits to the Coronado National Forest (IEc 2013, p. 14).

The activity most likely to be impacted by the designation of critical habitat is OHV use. OHV use is authorized on certain roads that pass near proposed critical habitat in Coronado National Forest, especially in units 2, 3, and 5. All of the Coronado National Forest recreational areas are within or adjacent to units 2, 3, and 5. Most of the proposed habitat segments

receive relatively low-level recreational use because of their remoteness and/or difficult terrain. Many of these roads are used primarily to access dispersed camping (IEc 2013, p. 14).

On the single NWR within proposed critical habitat (the Buenos Aires NWR, in Pima County, Arizona), popular recreational activities include camping, picnicking, mountain biking, horseback riding, hiking, and backpacking. Motorized vehicles are restricted to roadways. Hunting is permitted on approximately 90 percent of the refuge and is subject to both Refuge and Arizona State Hunting Regulations. Recreational uses in the NWR will likely increase with population growth in southern Arizona and in light of the stated goal of the 2003 Comprehensive Conservation Plan (CCP) to provide safe, accessible, high-quality wildlife-dependent recreational opportunities.

On BLM land, Coronado National Forest, Fort Huachuca, and Buenos Aires NWR, there could potentially be minor adverse impacts from critical habitat designation on some recreational opportunities and activities within designated critical habitat (e.g., OHV use) from the limitations and restrictions imposed on recreational activities to preserve PCEs. However, other recreational activities and opportunities would be enhanced, and could benefit from critical habitat designation (e.g., birdwatching, wildlife viewing, day hiking), because of increased habitat conservation.

Because modifications to the PCEs of critical habitat are closely tied to adverse effects to the species, current activities and activities that would trigger consultation for critical habitat are largely the same. Both the adverse and beneficial effects of critical habitat designation on recreation-related activities are expected to be minor because recreational use of most critical habitat areas is light and (1) new consultations based solely on the presence of designated critical habitat are unlikely, because land managers are already consulting on jaguar throughout the proposed critical habitat areas; and (2) the likelihood that reasonable and prudent alternatives developed under the jeopardy standard would be changed substantially with the addition of critical habitat designation and application of the adverse modification standard is small. Additional information is provided in the final environmental assessment section 3.11.

(189) Comment: The draft environmental assessment is inadequate because it fails to evaluate significant economic impacts due to water restrictions within the proposed designation of critical habitat.

Our response: In the context of an environmental assessment, the evaluation of the impacts of critical habitat designation focuses on outcomes of the potential increase in section 7 consultations resulting from the designation, since the designation does not itself produce or authorize direct physical impacts. A separate analysis was conducted by Industrial Economics Incorporated (IEc 2013) to assess the potential economic impacts associated with designation of critical habitat for the jaguar. Where appropriate, information from the draft economic analysis has been incorporated into the environmental assessment.

(190) Comment: The draft environmental assessment is inadequate because it fails to evaluate the level of controversy if the Rosemont Mine is constructed. The Service should complete a full environmental impact statement because of the controversial nature of the proposed action.

Our response: The environmental assessment evaluates impacts from the designation of critical habitat, not the impacts of the mine. The impacts from the designation of critical habitat for the jaguar are not likely to be highly controversial because the quality of the environment would not be significantly modified from current conditions. This analysis was based on past consultations, past impacts of jaguar conservation on activities within the jaguar recovery area, and the likely future impacts from jaguar conservation. Past section 7 consultations within designated critical habitat would likely be re-initiated. New activities could result in section 7 consultations. New consultations in unoccupied jaguar territories could be triggered. A number of activities, including wildland fire, fire management, and recreation could have jaguar conservation-related constraints or limitations imposed on them, although such measures would likely be the same as those under jeopardy consultations for the species. Impacts to water management and resource activities are not expected to be controversial because, as discussed in the analysis of impacts on water resources, the constraints on current water management activities are expected to be limited.

The Service understands that, given the prior history of designation, some level of controversy may result, especially if the outcome of the Service's consultation on the Rosemont Copper Mine leads to significant delays, re-evaluation, or termination of the project. However, the Rosemont Copper Mine biological opinion has been completed, and the Service determined that the mine would not result in destruction or adverse modification of jaguar critical habitat.

(191) Comment: The Service should complete a full environmental impact statement to be in compliance with the 10th Circuit decision.

Our response: The U.S. Court of Appeals for the Tenth Circuit stipulates we undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for a proposal when it is finished. The Service has complied with this requirement. See our response to comment 67 in *Comments from the States* under NEPA.

(192) Comment: The draft environmental assessment is inadequate because it fails to evaluate safety to our children, people, livestock, and pets.

Our response: The environmental assessment does evaluate safety. Foreseeable activities with potential risks to public health and safety include mining operations and activities related to fire management, particularly in the wildlife-urban interface (WUI) areas and areas where vegetation fuel loading has created conditions for catastrophic fire. There would be no or negligible impacts to public health or safety from the proposed designation of critical habitat. Impacts of wildland fire on public health and safety were determined to be minor, as wildland fire suppression and wildland fire management within WUI areas would not be significantly impeded by the designation of critical habitat. The designation would not create or lead to additional mining operations, or the deposition of pollutants to the air or water. Border enforcement activities would still be conducted within proposed critical habitat, pursuant to section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act, under which the Secretary of the DHS is authorized to waive laws where the Secretary of DHS deems it necessary to ensure the expeditious construction of border infrastructure in areas of high illegal entry.

(193) Comment: The draft environmental assessment is inadequate because it fails to evaluate tribal customs and cultures, and economy.

Our response: This critical habitat designation is not likely to affect sites, objects, or structures of historical, scientific, or cultural significance. The proposed designation would not result in any ground-disturbing activities that have the potential to affect archeological or other cultural resources. There are

several National Register of Historic Places listed historical sites within, or within close range of, critical habitat units, but they are human-built structures, which the proposed designation specifically avoids. Potential conservation measures or project modifications to protect critical habitat PCEs would not modify or pose risk of harm to any historic properties listed in or eligible for the NRHP.

(194) Comment: The Service should complete a full environmental impact statement because the action significantly affects the quality of the human environment.

Our response: Under the Council on Environmental Quality (CEQ) regulations, 40 CFR 1508.27, the determination of ''significant'' impacts, for the purpose of determining whether a more detailed environmental impact statement must be prepared, requires consideration of both context and intensity. Potential impacts on environmental resources, both beneficial and adverse, would be minor. Impacts of critical habitat designation on natural resources within the areas to be designated as jaguar habitat were analyzed and discussed in Chapter 3 of the draft environmental assessment. Applying the analysis of impacts to the significance criteria defined in CEQ regulations, the Service concludes that the adverse impacts of critical habitat designation would not be significant.

(195) Comment: The Service should complete a full environmental impact statement because the economic impacts on the local, state, and national economies.

Our response: Indirect socioeconomic impacts faced by project proponents, land managers, and landowners could include time delays, regulatory uncertainty, and stigma. However, the environmental assessment concludes that these are considered indirect, incremental impacts of the designation. See Chapter 3, Section 3.10 for a complete description of socioeconomics.

(196) Comment: The Service should complete a full environmental impact statement because adverse impacts of the proposed designation outweigh benefits.

Our response: 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. The purpose of the proposed action is to designate critical habitat for the jaguar, listed as endangered under the Act. Critical habitat designation would have long-term, beneficial, conservation-related impacts on jaguar survival and recovery through maintenance of PCEs. Potential impacts to environmental resources, both beneficial and adverse, would be minor or moderate in all cases. Analyses of impacts of critical habitat designation on sensitive resources within areas proposed as jaguar critical habitat were conducted and discussed in Chapter 3 of the draft environmental assessment, and it was concluded that designation of critical habitat would have both adverse or beneficial impacts on those resources. None of the specific resource or activity analyses found that the adverse impacts of critical habitat designation would be significant.

(197) Comment: The Service should complete a full environmental impact statement because the degree of impacts on health and safety are significant if Fort Huachuca is not exempted and if border security is compromised.

Our response: The Service has exempted Fort Huachuca from critical habitat designation based on their INRMP. See the Exemptions section of this final rule for further information. Also, see our response to comment number 72 in *Comments from States.*

(198) Comment: The Service should complete a full environmental impact statement because impacts on the unique characteristics of the area are significant if recreation is inhibited or completely curtailed in portions of the proposed jaguar habitat.

Our response: There are no designated Wild and Scenic River segments within the critical habitat designation. There are designated Wilderness Areas within the units; activities proposed by the Federal land managers in these areas would only be those specifically intended to improve the health of these ecosystems, and thus they would be anticipated to help recover or sustain the PCEs along these segments. Therefore, any adverse impacts to critical habitat would be negligible at most.

(199) Comment: The Service should complete a full environmental impact statement because the proposed designation would impose unique, unknown, and uncertain risks to current water users.

Our response: The impacts do not pose any uncertain, unique, or unknown risks. Past section 7 consultations within proposed designated critical habitat would likely be reinitiated. New activities in unoccupied areas would result in section 7 consultations. Conservation constraints or limitations related to proposed designated critical habitat would be similar to those imposed from species-related constraints.

(200) Comment: The Service should complete a full environmental impact statement because the proposed action is related to other actions, which cumulatively could produce significant impacts.

Our response: There would not be any significant cumulative impacts because, as described above in Chapter 3 of the environmental assessment, cumulative impacts would be limited to section 7 consultation outcomes and subsequent effects on other species, the effects of designated critical habitat for other species, and the effects of land management plans.

The CEQ regulations define cumulative effects as ''the impact on the environment which results from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions'' (40 CFR 1508.7). In the environmental assessment, we identify four other listed species with critical habitat that overlaps with jaguar proposed critical habitat. In the context of critical habitat, cumulative impacts could be created if critical habitat designations for multiple species affect the same natural and human resources. Actions that could have cumulative impacts would include: (1) Section 7 consultation outcomes and subsequent effects on other species; (2) the effects of designated critical habitat for other species; and (3) the effects of land management plans.

All of these units are already being included in consultations on activities that may adversely impact jaguar, so there would be no new consultations. However, while some of these areas may have undergone some section 7 consultation for the jaguar, the fact they are now being designated as critical habitat may require reevaluation of effects to PCEs for ongoing or not yet completed Federal actions, which then may require reinitiating consultation. This critical habitat designation will likely contribute minor cumulative impacts, given the number and nature of additional project modifications anticipated.

(201) Comment: The Service should complete a full environmental impact statement because the proposed action might adversely affect an endangered or threatened species or its habitat, as determined to be critical under the Act, because fuel loads would build and catastrophic fire potential would increase.

Our response: The designation of critical habitat for the jaguar will not

result in fuel loads buildup. Fuel-management activities, either mechanical treatments or prescribed burns, reduce the risks posed by heavy fuels loads. They intend to restore the forest ecosystem by reducing the risk of catastrophic wildland fire, lessening post-fire damage, and limiting the spread of invasive species and diseases. These activities would help maintain the jaguar PCE for greater than 1 to 50 percent canopy cover. Fuel-management and prescribed burning that are discountable, insignificant, or wholly beneficial to the PCEs do not require formal consultation; however, the action agency would need to confirm their finding of no adverse impact to jaguar critical habitat with the Service through informal consultation (Service 1998a). The primary impact of the additional formal or informal consultations would be increased administrative costs to the Service and action agencies.

Economics

(202) Comment: The proposed rule and the draft economic analysis lack the actions that Federal land managers already implement to protect jaguars in the United States.

Our response: The U.S. Bureau of Land Management (BLM), U.S. Forest Service (USFS), U.S. National Park Service (NPS), and Service land managers in proposed critical habitat areas already consider potential impacts to jaguar when conducting activities within proposed critical habitat areas. Chapter 3 of the draft economic analysis evaluates potential economic impacts to Federal lands management, mining activity is discussed in Chapter 5 of the analysis, border activities are discussed in Chapter 4, and DOD lands are addressed in Chapter 8. In support of these statements, since 1995 we have participated in 20 formal consultations on including the jaguar in Federal land management activities, only 4 of which resulted in formal consultation on this species. While Federal land managers have varying levels of conservation for the jaguar, all take some conservation actions for their lands based on the Federal Land Policy and Management Act of 1976, which states that ''. . . the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that . . . will preserve and protect certain public lands in their natural condition; (and) that will provide food and habitat for fish and wildlife . . .''

(203) Comment: The draft economic analysis ignores real economic costs by not quantifying additional conservation measures that could be requested to avoid adverse modification during major construction projects.

Our response: As described in section 5.2 of the draft economic analysis, the types of conservation measures that could be requested for major construction projects that may adversely modify or destroy jaguar critical habitat include: creation of permeable highways; re-vegetation and restoration of habitat; modification or elimination of nighttime lighting; reduction of project footprint; minimization of human presence, vehicles, and traffic; and permanent protection of offsite habitat. The only two large-scale construction projects, the Rosemont Mine and the Hermosa Project, are addressed in Chapter 5. The final economic analysis has been revised based on the conclusions of the recent biological opinion for the Rosemont Mine. At the low end, the final economic analysis estimates costs associated with implementation of requested conservation measures. The final economic analysis also considers a second scenario in which Rosemont Mine chooses not to proceed to production. Section 5.5.1 of the draft economic analysis describes potential impacts of this scenario in terms of lost economic revenue, tax revenue, and employment. These impacts represent the high-end effects of foregone mine production.

(204) Comment: The draft economic analysis does not consider costs of third-party litigation related to the finalization of the revised proposed rule. The costs of litigation incurred by small ranchers may be as much as $250,000 per case.

Our response: The Service does not consider the costs of litigation surrounding the critical habitat rule itself when considering the economic impacts of the rule. The extent to which litigation specifically regarding critical habitat may add to the costs of the designation is uncertain. While the critical habitat designation may stimulate additional legal actions, data do not exist to reliably estimate impacts. That is, estimating the number, scope, and timing of potential legal challenges would require significant speculation.

(205) Comment: The economic impacts of critical habitat designation will fall disproportionately on areas already under economic stress. Specifically, the areas of concern include the City of Douglas, Arizona; and Gila, Navajo, Greenlee, and Graham Counties in Arizona.

Our response: As described in Section 2.2 of the draft economic analysis, at the guidance of OMB and in compliance with Executive Order 12866 ''Regulatory Planning and Review,'' the draft economic analysis measures changes in economic efficiency in order to understand how society, as a whole, will be affected by a regulatory action. However, recognizing that distributive impacts may disproportionately affect some areas, the draft economic analysis also considers impacts on small entities; impacts on energy supply, distribution, and use; and regional economic impacts. Substantial changes to the regional economies are not expected for most industries within proposed critical habitat for the jaguar. Where potential exists for regional economic impacts—for example, if proposed mining operations do not proceed to production because of critical habitat designation—these impacts are estimated. In addition, the draft economic analysis provides information on the geographic distribution of impacts by unit in order to allow the Secretary to evaluate potential exclusions from critical habitat designation.

(206) Comment: The jaguar is not present within Arizona, and, as such, all economic impacts should be attributed to the designation of critical habitat and not the listing of the species. The draft economic analysis incorrectly characterizes costs that should be attributed to the designation of critical habitat as costs that would occur in the baseline due to the species' listing.

Our response: Due to the transient nature of the jaguar, land managers may not implement conservation measures based solely on whether the species occupies an area. Therefore, to assign costs to the baseline or incremental scenarios in the draft economic analysis, we contacted land managers within the proposed designation, including the Bureau of Land Management (BLM), U.S. Forest Service (USFS), and U.S. Customs and Border Protection (CBP), regarding possible changes to their management approaches following the designation of critical habitat. Where land managers already consider both the jaguar and its habitat, we assumed that incremental conservation measures were unlikely. For example, section 3.2.2 of the draft economic analysis discusses that BLM already considers the potential presence of the jaguar in all proposed critical units and subunits that fall within its jurisdiction. Where land managers may implement different conservation measures following the designation of critical habitat, we consider the costs of those conservation measures to be incremental.

(207) Comment: The draft economic analysis fails to disclose that Federal

and State agencies have already spent over $1.2 billion on the jaguar.

Our response: The draft economic analysis focuses on estimating future impacts of the designation of critical habitat, and does not retrospectively quantify baseline costs of jaguar conservation efforts. However, the draft economic analysis does provide information on conservation efforts that have been implemented in the past or are likely to be implemented in the future, absent the designation of critical habitat. The draft economic analysis does quantify future baseline impacts, which are forecast to be approximately $1.6 million over the next 20 years.

(208) Comment: The draft economic analysis does not describe what steps Federal land managers already take to protect the jaguar.

Our response: Conservation efforts that may benefit the jaguar and its habitat and are likely to be implemented in the baseline are described separately for each economic activity. Specifically, the second section of each activity-specific chapter in the draft economic analysis (e.g., section 3.2, section 4.2, etc.) discusses the types of projects that may have a Federal nexus for consultation and provides information on conservation efforts that have been implemented in the past or are likely to be implemented in the future, absent the designation of critical habitat.

(209) Comment: The draft economic analysis understates the incremental costs of consultation for the Coronado National Forest because the consultation forecast does not include travel management planning. These costs are instead misattributed to the CBP.

Our response: As described in Chapter 4–2 of the draft economic analysis, best management practices for CBP include designing access roads to minimize animal collisions and fragmentation of threatened and endangered populations. We expect that CBP operations will continue to adopt these best management practices following the designation of critical habitat. Additionally, as presented in section 3.4.1 of the draft economic analysis, we use the jaguar consultation history for the Coronado National Forest to forecast nine formal and nine informal consultations over the next 20 years. We assume that any travel management planning undertaken by the Coronado National Forest will be included in this consultation forecast.

(210) Comment: Additional clarification of impacts to activities on BLM lands is needed. Specifically, clarification of BLM's approach to consideration of the jaguar, ''major'' projects that could be affected by the designation, and impacts resulting from programmatic consultation on grazing operations on BLM lands is needed.

Our response: In developing the economic analysis, we contacted regional land managers at relevant Federal agencies, including BLM, regarding the agencies' current approach to jaguar conservation. Given the transient nature of the jaguar, BLM consults with the Service throughout the range of the jaguar in proposed critical habitat areas under its jurisdiction, including areas that may be unoccupied. BLM indicated that consultations expected for the foreseeable future are likely to relate to grazing activities. BLM did not implement any substantial changes to conservation management as a result of the agency's most recent programmatic consultation on livestock grazing activities, which included consideration of the jaguar. As a result, the agency does not anticipate future management changes following the critical habitat designation. Clarifying text has been added to section 3.2.2 to address these questions.

(211) Comment: The draft economic analysis should address impacts to hunting, fishing, and other recreational activities.

Our response: The draft economic analysis addresses potential impacts to recreational activities in Chapter 3 as part of the discussion of potential impacts to Federal land management. We do not forecast substantial changes to recreational management. Recreational activities that do not occur on Federal lands are unlikely to have a Federal nexus for section 7 consultation and, therefore, would not be affected by the designation of critical habitat.

(212) Comment: Clarification as to whether use of roads and hiking trails will be affected by the designation of critical habitat for the jaguar is needed. The discussion of potential conservation measures, including road closures and limitations to public access, on page 4–1 of the draft economic analysis suggests that CBP jaguar conservation efforts could affect hiking.

Our response: The discussion cited in this comment refers specifically to CBP roads. The potential for impacts to recreational activities is discussed in Chapter 3 of the draft economic analysis. As discussed in section 3.4 of the draft economic analysis, the economic analysis does not anticipate impacts to Federal land management activities beyond administrative costs of consultation. As a result, impacts to hiking are not anticipated.

(213) Comment: The analysis of impacts to the mining industry relies on industry-commissioned reports that may reflect potential bias. The draft economic analysis does not incorporate previous studies of the economic impact of the Rosemont Mine, such as those prepared by Dr. Thomas Michael Power in 2010 and 2012.

Our response: The draft economic analysis would estimate regional economic impacts of changes to the mining industry by using peer-reviewed, third-party studies if any were available. However, such studies do not exist. At the time the draft economic analysis was prepared, the best available data on the regional economic contributions of the Rosemont Mine and the Hermosa Project came from reports commissioned by the mining industry. Chapter 5 of the draft economic analysis acknowledges this affiliation. The final economic analysis has been revised to incorporate the information provided via public comment.

(214) Comment: The draft economic analysis incorrectly uses measures of gross economic activity as an indication of economic value of the Rosemont Mine and the Hermosa Project. These measures do not account for the costs associated with mining operations or the probability that production will be displaced to other mine locations. Alternative numbers from the same studies cited in the draft economic analysis that may provide a more reasonable estimate of the economic value of the mines should be used.

Our response: Chapter 5 of the draft economic analysis used measures of the increase in economic activity, as estimated by existing economic assessments conducted for the Rosemont Mine and the Hermosa Project, to describe the upper bound on possible economic losses. However, the commenter is correct that these values likely overstate the true economic impact of the loss of production. As a result, the final economic analysis has been revised to include the numbers suggested by this commenter, along with text describing potential caveats to these measures. The commenter is also correct that the true regional economic impact would account for the opportunity cost of producing at substitute mine locations. However, information on the location of such substitute sites is not available, and as a result, the draft economic analysis is not able to account for these costs. The final economic analysis has been revised to clarify and expand the discussion of potential impacts, as well as limitations of the analysis.

(215) Comment: The draft economic analysis does not estimate impacts

associated with changes in the price of copper, silver, and manganese that may result if mining projects are delayed or halted.

Our response: Substantial uncertainty exists regarding impacts of the designation of critical habitat on large mining projects that could sever connectivity to Mexico. For this reason, Chapter 5 considers two scenarios. At the low end, we estimate costs associated with the conservation measures requested in the recent biological opinion for the Rosemont Mine. At the high end, we assume that the Rosemont Mine and Hermosa Project will not proceed to production due to the high cost of conservation measures requested to avoid adverse modification of critical habitat. Although these scenarios result in incremental economic impacts, costs would be incurred primarily at the local or State levels. Although global mineral prices are not anticipated to be affected by changes to production at these two mines, the potential impact of changes to anticipated production at these mines is acknowledged in the final economic analysis.

(216) Comment: The draft economic analysis fails to consider the economic and national security impacts of critical habitat designation on the maintenance and development of existing mining claims on Federal lands, or those held by individuals and small entities.

Our response: To inform the analysis of economic impacts to mining operations, the Service and USFS provided information on the historical rate of consultation on mining activities as well as the number of mining claims over the past year. Communication with USFS indicated that small mining claims typically do not require section 7 consultation. However, Service records indicate that consultation has occasionally occurred for mineral exploration, resulting in informal consultation. Past conservation measures associated with these activities have included changes to lighting design, as well as recommended changes to the project footprint during the planning stage.

To be conservative, the draft economic analysis includes incremental administrative costs for development and maintenance of mining claims, although most small claims are not expected to require consultation. Additional text has been added to the final economic analysis to clarify that small mining claims typically do not require consultation.

(217) Comment: The draft economic analysis does not address the potential economic impacts of the designation of critical habitat on manganese production at Wildcat Silver's Hermosa Project. The United States currently imports 100 percent of its manganese.

Our response: Sections 5.4.2 and 5.5.2 of the draft economic analysis forecast economic impacts of the designation of critical habitat on the Hermosa Project. This analysis utilizes and reports the estimated net present value of the Hermosa Project, accounting for costs of production and tax responsibilities, as summarized in the Hermosa Project Preliminary Economic Assessment. This assessment incorporates potential future revenues associated with all production at the Hermosa Project, including manganese production.

(218) Comment: The draft economic analysis fails to incorporate the best available information on the extent of mining and mineral resources within the proposed designation. Specifically, the proposed designation spans an area with many established mining districts and includes many patented and unpatented mining claims within the Patagonia Mountains. The draft economic analysis did not contact BLM or USFS for information on planned mining projects. The Service should review the information on the Coronado National Forest's schedule of proposed actions and source information for online databases of mining claims, mineral surveys, and land records. The draft economic analysis underestimates impacts to mining operations by not including such actions in the analysis.

Our response: To inform the analysis of mineral extraction activities in the draft economic analysis, we spoke with BLM and USFS managers about the frequency and type of consultations associated with mining activities. Section 5.3 of the draft economic analysis describes the historical rate of consultation with USFS since the listing of the species. The historical consultation rate for the jaguar does not include any consultations with BLM on mining activity, and communication with BLM did not identify any planned mining projects. As a result, we use the historical rate of consultation on USFS lands to forecast future impacts, as well as evaluating impacts separately for the two large mining construction projects known to be planned within critical habitat.

Communication with USFS indicated that small mining claims typically do not require section 7 consultation. However, Service records indicate that consultation has occasionally occurred for mineral exploration, resulting in informal consultation. Past conservation measures associated with these activities have included changes to lighting design, as well as recommended changes to the project footprint during the planning stage.

To be conservative, the draft economic analysis includes incremental administrative costs for development and maintenance of mining claims, although most small claims are not expected to require consultation. Additional text has been added to the final economic analysis to clarify that small mining claims typically do not require consultation.

(219) Comment: The draft economic analysis of mining impacts does not provide useful information because it notes that the probability that incremental conservation measures will be requested ranges from zero to 100 percent.

Our response: The final economic analysis has been revised based on the conclusions of the recent biological opinion for the Rosemont Mine. At the low end, the final economic analysis estimates costs associated with implementation of requested conservation measures. Because of concerns expressed previously by the mining companies, the final economic analysis also considers a second scenario in which the mine chooses not to proceed to production. The final economic analysis notes that, based on the outcome of the section 7 consultation for the Rosemont Mine, the second scenario is considered less likely to occur. However, at the time the draft economic analysis was prepared, the relative likelihood of the two scenarios could not be predicted, and the Service presented a range of plausible impacts as the best available information.

(220) Comment: The draft economic analysis treats tax revenues as pure benefits to local, state, and Federal governments. The analysis does not account for the related increase in demand for public services that could result from new mining activity.

Our response: The commenter is correct that the net regional economic impacts would account for increases in public expenditures resulting from increases in mineral production due to increased demand for public services. However, information on the potential magnitude of such an increase in demand for public services is not available. The final economic analysis has been revised to clarify and expand the discussion of potential regional economic impacts, as well as limitations of the analysis.

(221) Comment: The draft economic analysis presents regional economic impacts associated with mining activity as comparable to economic efficiency losses associated with increased

consultation. The regional economic impacts are a separate measure of economic activity and cannot be added to economic efficiency losses.

Our response: Section 2.2 of the draft economic analysis describes the distinction between efficiency effects and distributional effects. It is correct that the draft economic analysis reported in Chapter 5, as part of a scenario describing upper bound impacts related to mining activities, regional economic impacts as potential impacts of the rule. However, these were reported separately from efficiency effects. Clarifying text has been added to the final economic analysis.

(222) Comment: The draft economic analysis does not consider the value of alternative land uses at the Rosemont Mine site that could affect the cost to society should mining not proceed.

Our response: It is correct that a more precise measure of potential economic impacts to the area that is being considered for Rosemont Mine would consider that, should the area not be mined, the area could be used for other purposes, such as recreation, which would offset to some degree regional impacts of not mining the area. However, because of uncertainty of alternative future uses, the draft economic analysis is not able to account for these opportunity costs. As such, the reported potential societal costs of not mining may be less than is reported in the upper bound scenario. The final economic analysis has been revised to clarify and expand the discussion of potential regional economic impacts, as well as limitations of the analysis.

(223) Comment: The draft economic analysis concludes that the benefits of the Rosemont Mine dominate any potential costs, resulting in a large cost to the region and the state if the mine does not proceed. The draft economic analysis does not document the analysis that led to that conclusion.

Our response: The draft economic analysis provides an estimate of potential future costs of critical habitat designation. It does not conclude that costs exceed benefits, nor does the analysis attempt to weigh costs against benefits at all. Instead, the draft economic analysis provides information on the likely magnitude of costs and the types of ancillary benefits that may occur to inform the evaluation of the designation by the Secretary of the Department of the Interior. As discussed in Chapter 2, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking. Chapter 5 of the draft economic analysis describes cost impacts associated with the potential loss of mineral production at the Rosemont Mine, and potential economic benefits are addressed separately in Chapter 11. The final economic analysis has been revised to clarify that the loss of potential employment and revenues associated with Rosemont Mine are not net of potential benefits.

(224) Comment: The draft economic analysis fails to include any costs associated with conservation measures for mining activities, despite describing the potential for such costs to occur. Instead, the draft economic analysis forecasts only a small amount of incremental administrative costs. The information on the cost of conservation measures is available in the preliminary economic assessment for the Hermosa Project.

Our response: The final economic analysis has been revised to incorporate available quantitative information on the Hermosa Project, wherever possible. However, while the Preliminary Economic Assessment for the Hermosa Project includes information on the breakdown of capital and operating costs, it does not provide information specific to jaguar conservation efforts. The cost estimates in the Preliminary Economic Assessment are not provided to a level of detail that would allow such estimation. For these reasons, the draft economic analysis is not able to fully quantify costs of implementing conservation measures that may be undertaken for the jaguar and its habitat at the Rosemont Mine or the Hermosa Project using these data.

(225) Comment: The draft economic analysis refers to potential impacts to large mining projects as being ''unquantified'' in the conclusions for the analysis, despite providing quantified estimates for these impacts elsewhere in the analysis.

Our response: The text of the final economic analysis has been revised to clarify that potential impacts to mining projects are quantified but not added to other impact estimates due to the high level of uncertainty surrounding impact estimates. The final economic analysis has also been revised to incorporate discussion of these impacts into the report's conclusions.

(226) Comment: The draft economic analysis underestimates costs to mining operations by ignoring economic impacts of conservation measures. In particular, the draft economic analysis ignores the expected economic contribution of the Rosemont Mine, as estimated in the analysis by the L. William Seidman Research Institute cited in the draft economic analysis, when quantifying costs associated with the proposed designation.

Our response: The final economic analysis has been revised based on the conclusions of the recent biological opinion for the Rosemont Mine. At the low end, the final economic analysis estimates costs associated with implementation of requested conservation measures. The final economic analysis also considers a second scenario in which Rosemont Mine chooses not to proceed to production. Section 5.5.1 of the draft economic analysis describes potential impacts of this scenario in terms of lost economic revenue, tax revenue, and employment, using the values estimated in the analysis conducted by the L. William Seidman Research Institute. These impacts represent the high-end effects of foregone mine production.

(227) Comment: The draft economic analysis suggests that the designation of critical habitat will result in economic benefits by limiting mining activity. However, the draft economic analysis ignores the benefits that mining projects, such as the Rosemont Mine, may provide to local, state, and national economies.

Our response: Section 5.5.1 of the draft economic analysis describes the potential economic impacts of a scenario in which the Rosemont Mine is not able to proceed to production. To estimate these costs, the draft economic analysis assumes that economic benefits of the mine, including economic revenue, tax revenue, and employment, would be foregone. Section 5.5.2 of the draft economic analysis provides a similar description of foregone economic benefits for the Hermosa Project. In these sections, the draft economic analysis acknowledges that mining projects may provide benefits to local, state, and national economies, and that these benefits may be lost if the designation of critical habitat hinders production.

(228) Comment: The designation of critical habitat will lead to a decrease in the value of privately owned land. The designation would place restrictions on the landowner's ability to subdivide the land. Additionally, entering into a conservation easement would decrease the value of the land.

Our response: Section 2.3.2 of the draft economic analysis discusses that public attitudes about the limits or restrictions that critical habitat may impose can cause real economic effects to property owners, regardless of whether such limits are actually imposed (stigma effects). As the public becomes aware of the true regulatory burden imposed by critical habitat, the

impact of the designation on property markets may decrease. Thus, to the extent that stigma impacts occur in the future, impacts are expected to be temporary.

(229) Comment: The draft economic analysis underestimates the number of consultations relating to grazing that will occur over the analytic timeframe. Every Federal grazing permittee within the proposed designation will be subject to reinitiated consultation and will have to consult twice within the 20-year analytic timeframe, based on typical timeframes for permit renewals. The draft economic analysis should consider costs to individuals and local ranchers, in addition to overall impacts. In particular, the draft economic analysis should consider costs associated with consultations for new construction or maintenance of range improvements on Federal grazing allotments.

Our response: As discussed in Section 3.4 of the draft economic analysis, based on communication with BLM and USFS staff and the agencies' consultation history, we assume that both BLM and USFS will reinitiate programmatic consultations on livestock grazing activities. These programmatic consultations will cover all Federal grazing permittees collectively. The agencies do not anticipate undertaking individual consultations with, or on behalf of, permittees.

(230) Comment: The designation of critical habitat may affect the relationship between the Natural Resources Conservation Service (NRCS) and ranchers. In particular, the designation of critical habitat may lead to a reduction in NRCS participation within the proposed designation, and could therefore result in regional economic and environmental impacts.

Our response: Section 9.4.1 of the draft economic analysis addresses the public concern that ranchers and farmers could withdraw participation in Federal programs, such as those implemented by NRCS, in order to avoid a potential Federal nexus for consultation generated by receipt of Federal funding. However, as described in the draft economic analysis, the designation of critical habitat for other species in the region has not led to such withdrawals, in the experience of NRCS. As a result, the draft economic analysis does not forecast economic impacts associated with withdrawals from Federal conservation programs due to the designation of critical habitat.

(231) Comment: One paragraph in the draft economic analysis implies that private landowners consult directly with the Service. It should be clarified that Federal agencies, such as NRCS, BLM, or the Bureau of Reclamation, consult with the Service.

Our response: The text of the final economic analysis has been revised to clarify that NRCS, and not individual landowners, would consult with the Service. Individual landowners may, in some cases, participate in section 7 consultation as third parties.

(232) Comment: The draft economic analysis should consider economic impacts related to precluding, delaying, or requiring mitigation for the construction of the previously proposed Sierrita natural gas pipeline, which is expected to cross jaguar critical habitat.

Our response: As described in section 9.1 of the draft economic analysis, the installation of natural gas pipelines may occur in proposed critical habitat areas. In addition, as described in chapter 3 of the draft economic analysis, BLM consulted on a pipeline project in 2006. We use historic rates of consultation to forecast future costs associated with both miscellaneous activities and projects on BLM lands. In this manner, we incorporate the possibility that a future consultation on the Sierrita natural gas pipeline may occur. Currently, sufficient information on the project scope and location is not available to forecast potential conservation measures for this pipeline. A brief discussion of this potential project has been added to the final economic analysis.

(233) Comment: The draft economic analysis should address the impacts of multiple species management, especially with regard to reductions in cattle grazing on USFS lands. Such livestock reductions may be attributed to the conservation of numerous listed species, including the jaguar.

Our response: Past actions related to consultations on grazing activities related to other species have affected grazing opportunities in some areas. However, as discussed in Chapter 3 of the draft economic analysis, no changes to grazing on Federal lands are expected as a result of the designation of critical habitat for the jaguar in either the baseline or incremental scenario.

(234) Comment: The Service should include additional information on impacts to small businesses, such as information on the percentage of farmers and ranchers in Arizona and New Mexico that are considered small businesses and that are owned by women, and the impact the designation would have on these businesses.

Our response: As described in section A.1.2 of Appendix A, small entities are generally not directly involved in the consultation process between NRCS or U.S. Department of Agriculture (USDA) and the Service. As a result, impacts to small ranchers are not expected.

(235) Comment: The Service should include a reference for a statement in the draft economic analysis that describes the review process for range improvement projects carried out by the Arizona State Land Department (ASLD). The draft economic analysis states that this review is conducted by the Arizona Game and Fish Department (AGFD).

Our response: As cited in the draft economic analysis, the statement references personal communication with the Arizona State Land Department (ASLD) regarding typical project review.

(236) Comment: The draft economic analysis should quantify direct and indirect economic benefits of the designation of critical habitat. In particular, the analysis should note the potential for educational, recreational, and eco-tourism benefits.

Our response: The primary purpose of critical habitat designation is to support the conservation of the jaguar. Rather than rely on economic measures, the Service believes that the direct benefits of the proposed rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking. As described in Chapter 11 of the draft economic analysis, quantification and monetization of this conservation benefit requires information on the incremental change in the probability of conservation resulting from the designation. Such information is not available, and as a result, monetization of the primary benefit of critical habitat designation is not possible. However, Chapter 11 of the draft economic analysis provides a qualitative description of the potential categories of direct and ancillary benefits that may result from the designation. The benefits described in Chapter 11 include those mentioned in public comments, such as use values (e.g., wildlife viewing or eco-tourism), non-use values (e.g., existence value), aesthetic benefits, educational benefits, and property value benefits. This chapter also identifies the critical habitat units where such benefits are likely to occur.

Required Determinations

In our August 20, 2012, proposed rule (77 FR 50214), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. We have now made use of the draft economic analysis data to make these

determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). However, based on the draft economic analysis data and draft environmental assessment, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and E.O. 12630 (Takings). In addition, we are amending our required determinations concerning the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951).

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 significant because it will raise novel legal or policy issues.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for jaguar will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses (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 on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

The Service's current understanding of recent case law is that Federal agencies are required to evaluate the potential impacts of rulemaking only on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species has a regulatory effect only where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the EO regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat will only directly regulate Federal agencies, which are not by definition small business entities. And as such, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our final economic analysis for this rule we considered and evaluated the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Designation of critical habitat only affects activities authorized, funded, or

carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the jaguar. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Determinations of Adverse Effects and Application of the ''Adverse Modification'' Standard* section, above).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the jaguar and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 2 through 10 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Federal land management; (2) border protection activities; (3) mining; (4) transportation activities; (5) development; (6) military activities; (7) livestock grazing and other activities; and (8) Tohono O'odham Nation activities.

To determine if the designation of critical habitat for the jaguar would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as mining, transportation construction, development, and agriculture and grazing. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Because the jaguar is already listed as an endangered species under the Act, in areas where the jaguar is present, Federal agencies are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the final economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the designation of critical habitat for the jaguar. The designation of critical habitat for the jaguar is unlikely to directly affect any small entities. The costs associated with the designation are likely to be limited to the incremental impacts associated with administrative costs of section 7 consultations. Small entities may participate in section 7 consultation as a third party (the primary consulting parties being the Service and the Federal action agency). It is therefore possible that the small entities may spend additional time considering critical habitat due to the need for a section 7 consultation for the jaguar. We do not expect critical habitat designation to result in impacts to small entities for the following activities: forest management, border protection, and military activities (as they do not involve third parties, only Federal and State agencies); and development, recreation, and utility construction (as we do not forecast any impacts to these activities). Additionally, Chapter 10 of the final economic analysis details the potential incremental impacts of critical habitat designation on tribes with lands overlapping the designation. Tribes are generally not subject to review under the RFA/SBREFA. For example, in its guidance on preparing analyses in compliance with the RFA/SBREFA, the Environmental Protection Agency states that, for the purposes of the RFA, States and tribal governments are not considered small governments but rather as independent sovereigns.

Estimated incremental costs that may be borne by small entities consist of administrative impacts of section 7 consultation related to mining, transportation construction, and agriculture and grazing. These potential impacts are described in greater detail below. It is uncertain whether any third parties involved with mining or transportation would be considered small entities when fully operational; however, assuming that they would qualify as small entities, the cost of consultation represents less than 1 percent of each company's annual revenues. Potential impacts to agriculture and grazing related to foregone Natural Resources Conservation Service (NRCS) funding are not quantified; however, we do not expect small entities to bear a direct burden. Please refer to the final economic analysis of the critical habitat designation for a more detailed discussion of potential economic impacts.

Mining

Chapter 5 of the final economic analysis describes potential impacts arising from three known formal consultations on mining: the Rosemont Mine, the Hermosa Project, and the Coronado National Forest Land and Resource Management Plan. According to the Small Business Administration, to be considered a small entity in this industry, companies must employ fewer than 500 people (13 CFR 121.201). The Coronado National Forest is a Federal entity and is not considered small.

As of 2011, Augusta Resource Corporation, which is the parent company of Rosemont Mine, employed a total of 56 people throughout Canada and the United States. Rosemont Mine anticipates employing up to 494 people directly at the Rosemont Mine. It is therefore unlikely that, following construction of the Rosemont Mine, Augusta Resource Corporation will employ fewer than 500 people.

It is uncertain whether Wildcat Silver will employ more than 500 workers during the operation of the Hermosa Project. Therefore, we conservatively assume that Wildcat Silver is a small entity. The cost of consultation for Wildcat Silver is approximately $875. Although Wildcat Silver is considered to be an exploration stage enterprise and has yet to generate revenue from its operations, this cost is unlikely to be a significant burden on the company, as its assets exceeded $60 million and it had more than $3 million in cash and cash equivalents as of September 30, 2012.

Additionally, in Chapter 5 of the final economic analysis, we discuss the potential for jaguar critical habitat to affect other mineral mining operations. While incremental project modification impacts are not forecast for these activities over 20 years, administrative costs related to 2.5 forecasted informal consultations on mining exploration may involve small entities as third-party project proponents. It is uncertain whether third parties involved in these mining consultations will be small; however, we conservatively assume that each forecast consultation on mining will involve a small entity. The cost of consultation is approximately $875. This cost likely represents less than one percent of annual revenues for mining companies.

Transportation Construction

In the final economic analysis, we forecast consultations on these activities, as discussed in Chapter 6. These consultations will likely not involve third parties, as transportation consultations typically require only administrative effort on the part of State departments of transportation and the Service. However, we conservatively assume that all consultations will involve a small third party. We forecast two formal consultations and seven technical assistance consultations on such projects that may involve small entities within the study area. Assuming that all transportation potential impacts are borne by nine small private entities, this amounts to less than one consultation per year. The per-entity impact, ranging from approximately $875 to $7,875, represents less than one percent of annual revenues.

Agriculture and Grazing

In the final economic analysis, we forecast consultations on these activities, as discussed in Chapter 9. In this analysis, we discuss potential impacts related to foregone NRCS funding, but do not quantify these impacts. While up to six separate small entities could be affected based on past rates of NRCS funding near critical habitat, we do not expect these entities to bear a direct burden. Additionally, the possibility exists for administrative impacts to occur in association with two formal and three informal forecast consultations on agriculture and grazing projects that may involve small entities within the study area. However, small entities are likely not directly involved in the consultation process between NRCS or U.S. Department of Agriculture with the Service.

Table 5 presents the results of the final economic analysis. It provides the relevant small entity thresholds by North American Industry Classification System (NAICS) code, the total number of entities and small entities, and the estimated incremental impacts as a percentage of annual revenues.

TABLE 5—SUMMARY OF POTENTIAL IMPACTS ON SMALL ENTITIES

Activity	Industry (NAICS codes)	Small entity size standard (millions of dollars)	Total number of entities	Number of small entities	Number of affected small entities [1] (percent of total small entities)	Incremental economic impacts to small businesses [2]	Impacts as percent of annual revenues [3]
Transportation	Highway, Street and Bridge Construction (237310).	33.5	120	110	9 (7%)	$875 to $7,875 [4]	0.09
	Other Heavy and Civil Engineering Construction (237990).	33.5	30	28			
Agriculture and Grazing.	Beef Cattle Ranching and Farming (112111).	0.75	80	74	0 (0%)	$0 per entity [5]	0
	Cotton Farming (115111).	0.75	3	1			
Mining	Iron Ore Mining (212210).	500 employees	0	0	4 (13%)	$875 to $3,500 [6]	
	Gold Ore Mining (212221).	500 employees	6	6			
	Silver Ore Mining (212222).	500 employees	1	1			
	Lead Ore and Zinc Ore Mining (212231).	500 employees	6	6			
	Copper Ore and Nickel Ore Mining (212234).	500 employees	33	8			
	Uranium-Radium-Vanadium Ore Mining (212291).	500 employees	0	0			
	All Other Metal Ore Mining (212299).	500 employees	0	0			
	Support Activities for Metal Mining (213114).	7	9	8			
	Support Activities for Nonmetallic Minerals, except fuels (213115).	7	3	3			

Notes:

1. To estimate the number of affected small entities, this analysis assumes one small entity per forecast section 7 consultation. For agriculture and grazing, this assumes one small entity per NRCS funding instance.

2. For these activities, we conservatively estimate that all administrative costs of consultation will be incurred by a small entity in a single year. Therefore, we use the total, undiscounted third party incremental costs of a formal consultation.

3. Annual revenues are estimated using Risk Management Association (RMA), *Annual Statement Studies: Financial Ratio Benchmarks 2012 to 2013,* 2012. For each NAICS code, RMA provides the net sales and the number of entities falling within several sales categories: $0 to $1 million, $1 to 3 million, $3 to $5 million, $5 to 10 million, or $10 to $25 million. Based on the number of entities and total net sales falling within each sales category, we developed an estimate of the weighted average net sales (revenues) per small entity: for transportation-related firms, annual revenues were estimated to be approximately $8.6 million; for companies involved in agriculture and grazing, revenues are estimated at $430,000 annually; for mining firms, annual revenue information was not available, but due to the highly capitalized nature of the mining industry, mining firms are assumed to have high annual revenues such that per-entity impacts of $2,625 resulting from the designation of critical habitat are likely to be insignificant.

4. We are uncertain in what year consultations and technical assistance requests on transportation activities will occur over the next 20 years. For the purposes of this analysis, we assume affected small entities will participate in approximately nine consultations or technical assistance requests over 20 years, or less than one consultation per year. However, if we assume that a single small entity participates in multiple formal consultations in a single year, the administrative costs of such activity are still likely to be less than one percent of annual tax revenues (e.g., nine consultations × $875/$9,000,000 = 0.09 percent of annual revenues).

5. Potential impacts related to NRCS funding are not quantified.

6. We are uncertain in what year consultations on mining will occur over the next 20 years. For the purposes of this analysis, we assume affected small entities will participate in approximately 4 consultations over 20 years, one of which will be associated with the Hermosa Project and will involve Wildcat Silver Corporation. However, if we assume that a single small entity participates in multiple consultations in a single year, the administrative costs of such activity are still likely to be less than one percent of annual revenues. Although data on annual revenues for mining companies were unavailable, due to the highly capitalized nature of the mining industry, companies involved in mining operations are likely to produce revenues large enough that the cost of undertaking three consultations in a single year would likely be less than one percent of annual revenues (e.g., four consultations × $875 = $3,500. $3,500 represents one percent of annual revenues of $350,000. Mining companies are likely to produce revenues of greater than $350,000 annually).

Source: Dialog search of File 516, Dun and Bradstreet, ''Duns Market Identifiers,'' on January 3, 2013.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for jaguar will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration.

The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with jaguar 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 it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The final economic analysis concludes incremental impacts may occur due to (1) the administrative costs of conducting section 7 consultation; and (2) implementation of any conservation efforts requested by the Service through section 7 consultation to avoid potential destruction or adverse modification of critical habitat; however, these are not expected to

significantly affect small governments. Incremental impacts stemming from various species conservation and development control activities are expected to be borne by the Federal Government, State agencies, with some effects to mining and transportation, which are not considered small governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for jaguar in a takings implications assessment. The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the jaguar. Based on information contained in the economic analysis and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for the jaguar does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism assessment 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 New Mexico and Arizona. We received comments from the New Mexico Department of Game and Fish and the Arizona Game and Fish Department and have addressed them in the Summary of Comments and Recommendations section of the rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the jaguar. 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 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 the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the jaguar, 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 undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for a proposal when it is finished.

We performed the NEPA analysis, and a draft of the environmental assessment was available for public comment in the **Federal Register** on July 1, 2013 (78 FR 39237). We also accepted public comments on the draft environmental assessment and made revisions in response to many of those comments (see Summary of Comments and Recommendations above). 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 online at *http://www.regulations.gov,* by mail from the Arizona Ecological Services Fish and Wildlife Office (see **ADDRESSES**), or by visiting our Web site at *http://www.fws.gov/southwest/es/arizona/Jaguar.htm.*

We analyzed the potential impacts of critical habitat designation on the following resources and resource management types: Land use and management; fish, wildlife, and plants (including endangered and threatened species); fire management; water resources (including water management projects and groundwater pumping); livestock grazing; construction and development (including roads, bridges, dams, infrastructure, residential); tribal trust resources; soils; recreation and

hunting; socioeconomics; environmental justice; mining and minerals extraction; and National security. We found that the designation of critical habitat for the jaguar 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: (1) Increase the number of additional section 7 consultations for proposed projects within designated critical habitat; (2) trigger new consultations in unoccupied areas; (3) increase the number of reinitiated section 7 consultations for ongoing projects within designated critical habitat; (4) maintain the jaguar's PCEs; (5) increase the likelihood of greater expenditures of time and Federal funds to develop measures to prevent both adverse effects to the species and adverse modification to critical habitat; and (6) indirectly increase the likelihood of greater expenditure of non-Federal funds by project proponents to complete section 7 consultations and to develop reasonable and prudent alternatives (to avoid adverse modification or destruction of critical habitat by Federal agencies) that maintain critical habitat. Such an increase might occur where there is a Federal nexus to actions within areas with no known jaguar territories, or from the addition of adverse modification analyses to jeopardy consultations in known jaguar habitat.

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.

Using the criteria found in the *Criteria Used To Identify Critical Habitat* section, we have determined that there are tribal lands that were occupied by jaguar at the time of listing that contain the features essential for the conservation of the species, as well as tribal lands unoccupied by the species at the time of listing that are essential for the conservation of the jaguar in the United States. Potentially affected Tribes include: The Ak Chin Community, Gila River Indian Community, Hope Tribe, Pascua Yaqui Tribe, Salt River Pima Maricopa Indian Tribe, San Carlos Apache Tribe, Tohono O'odham Tribe, and White Mountain Apache Tribe. The Tohono O'odham Nation is the only tribe with tribal lands within designated critical habitat. We have conducted government-to-government consultation with these tribes throughout the public comment period and during development of the final designation of jaguar critical habitat.

On May 16, 2012, we sent a letter to the Tohono O'odham Nation (the one Tribe that owns and manages land within the proposed designation) and Bureau of Indian Affairs notifying them of our intent to propose critical habitat for the jaguar and describing the exclusion process under section 4(b)(2) of the Act. On August 24, 2012, we notified all tribes potentially affected by our proposal to designate jaguar critical habitat via email, then followed up by sending a letter to each tribal leader on September 28, 2012. We engaged in conversations with the Tohono O'odham Nation about the proposal to the extent possible without disclosing pre-decisional information. On September 27, 2012, we met with Tohono O'odham Nation staff to discuss the proposed designation. On August 30, 2013, we notified all tribes potentially affected by our revised proposal to designate jaguar critical habitat via email that we reopened the comment period on the revised proposed rule, draft economic analysis, and draft environmental assessment, then followed up by sending a letter to each tribal leader on September 3, 2013. In addition, the Tohono O'odham Nation has a representative on the Jaguar Recovery Team and so the tribe has been aware that the Service was working on a critical habitat proposal.

We considered these tribal areas for exclusion from the final critical habitat designation to the extent consistent with the requirements of section 4(b)(2) of the Act, and subsequently, excluded all tribal lands from this final designation.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Arizona Ecological Services Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Jaguar (*Panthera onca*)'' 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							
*	*	*	*	*		*	*
Jaguar	*Panthera onca*	U.S.A. (AZ, CA, LA, NM, TX) Mexico, Central and South America.	Entire	E	5, 622	17.95(a)	NA
*	*	*	*	*		*	*

■ 3. In § 17.95, amend paragraph (a) by adding an entry for ''Jaguar (*Panthera onca*)'', in the same 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.*

* * * * *

Jaguar (*Panthera onca*)

(1) Critical habitat units are depicted for Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological feature essential to the conservation of jaguar consists of expansive open spaces in the southwestern United States of at least 100 km² (32 to 38.6 mi²) in size which:

(i) Provide connectivity to Mexico;

(ii) Contain adequate levels of native prey species, including deer and javelina, as well as medium-sized prey such as coatis, skunks, raccoons, or jackrabbits;

(iii) Include surface water sources available within 20 km (12.4 mi) of each other;

(iv) Contain greater than 1 to 50 percent canopy cover within Madrean evergreen woodland, generally recognized by a mixture of oak (*Quercus* spp.), juniper (*Juniperus* spp.), and pine (*Pinus* spp.) trees on the landscape, or semidesert grassland vegetation communities, usually characterized by *Pleuraphis mutica* (tobosagrass) or *Bouteloua eriopoda* (black grama) along with other grasses;

(v) Are characterized by intermediately, moderately, or highly rugged terrain;

(vi) Are below 2,000 m (6,562 feet) in elevation; and

(vii) Are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-km² (0.4-mi²) area.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on April 4, 2014.

(4) *Critical habitat map units.* Data layers defining map units were created using hydrography data, vegetation biomes, tree cover, terrain ruggedness, elevation, Human Influence Index, and undisputed Class I jaguar records from 1962 to September 11, 2013, and were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Note: Index map follows:

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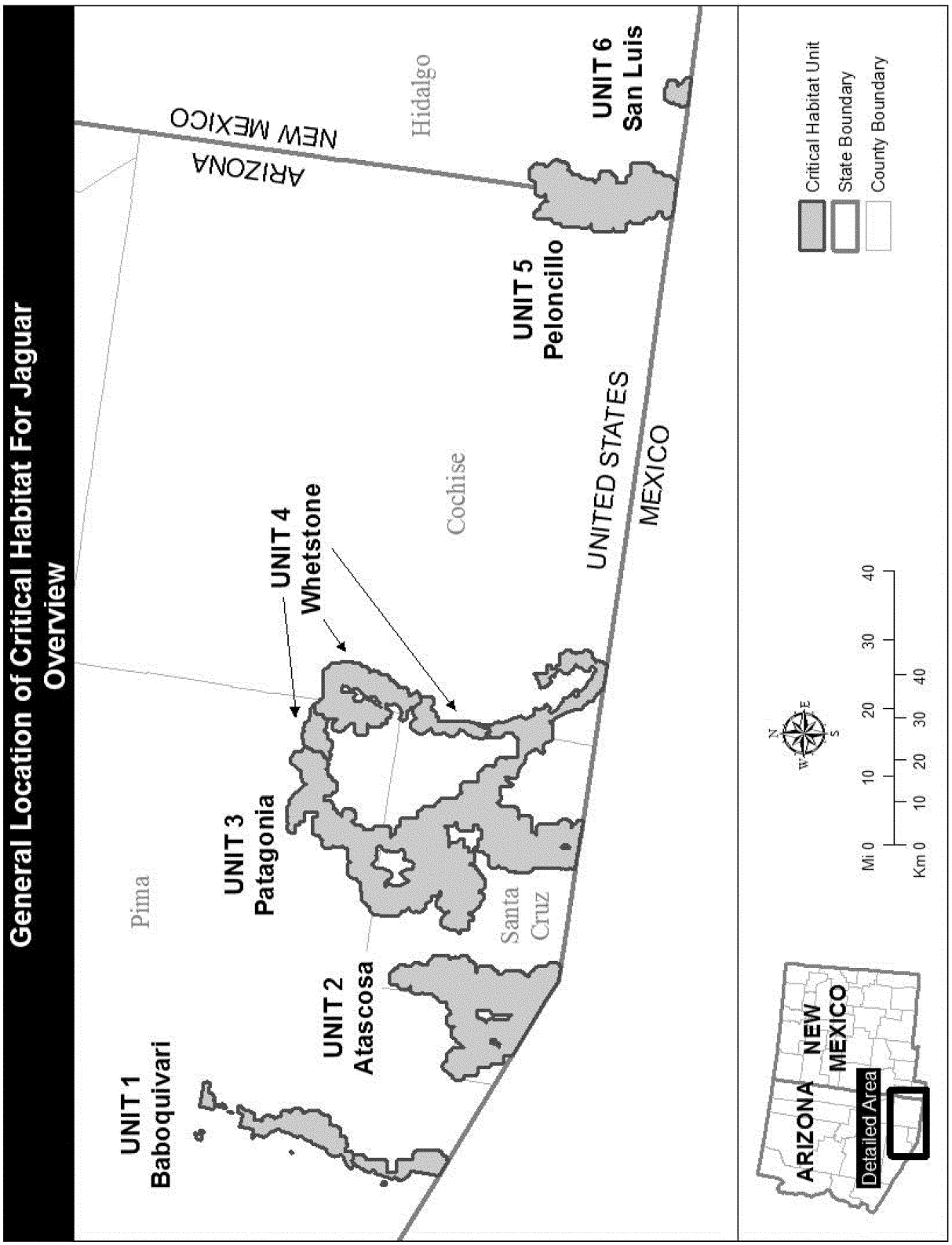
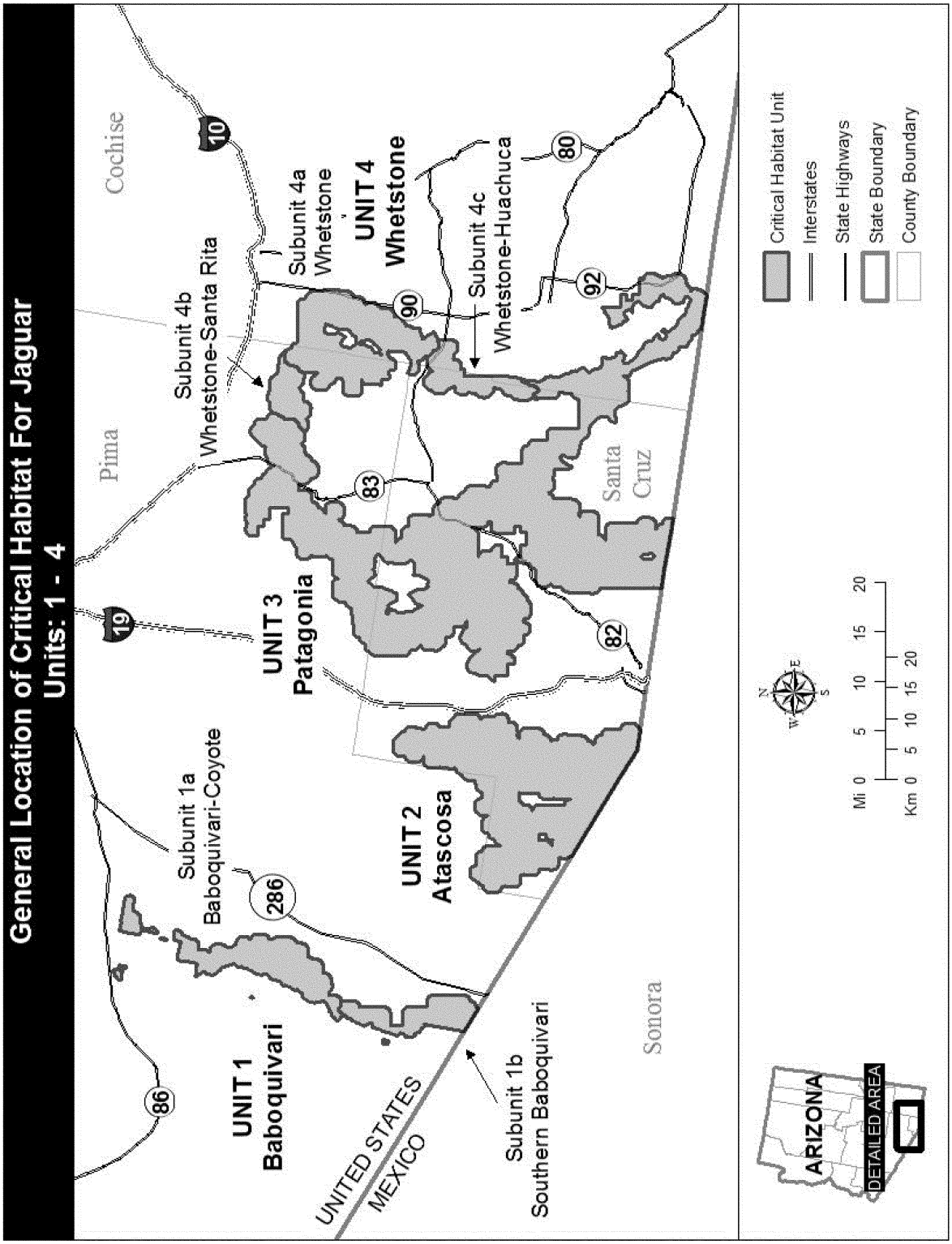
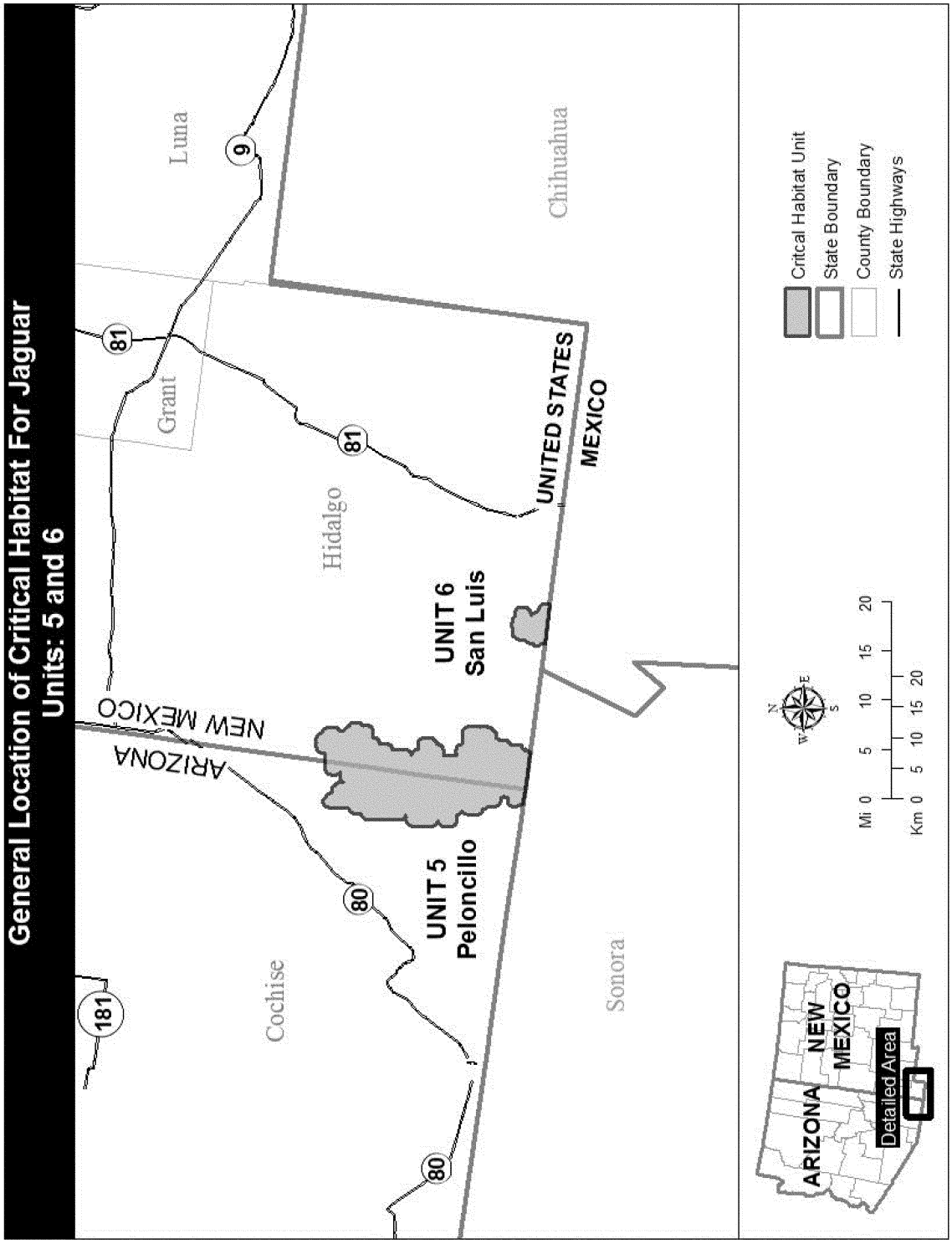


(6) Units 1, 2, 3, and 4: Baboquivari, Atascosa, Patagonia, and Whetstone Units, Pima, Santa Cruz, and Cochise Counties, Arizona. Map of Units 1, 2, 3, and 4 follows:



(7) Units 5 and 6: Peloncillo and San Luis Units, Cochise County, Arizona, and Hidalgo County, New Mexico. Map of Units 5 and 6 follows:



* * * * *

Dated: January 29, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–03485 Filed 3–4–14; 8:45 am]

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Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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