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MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION

5 CFR Chapter XCIX

RIN 3260–AA00

Freedom of Information Act Regulations

AGENCY: Military Compensation and Retirement Modernization Commission.

ACTION: Interim final rule.

SUMMARY: The Military Compensation and Retirement Modernization Commission (MCRMC) is issuing an interim final rule, establishing procedures for the public to obtain information from MCRMC under the Freedom of Information Act (FOIA).

DATES: This interim final rule is effective on September 15, 2014. Written comments on the interim final rule should be received on or before October 15, 2014.

ADDRESSES: Written comments concerning this interim final rule may be submitted to the MCRMC Desk Officer at the Office of Management and Budget (OMB) by email at *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher Nuneviller, Associate Director, Administration and Operations, Military Compensation and Retirement Modernization Commission, at (703) 692–2080 or by email at *foia@mcrmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 2, 2013, the President signed into law the National Defense Authorization Act for Fiscal Year 2013, Public Law 112–239, Subtitle H, 126 Stat. 1632, 1787 (2013) (amended by National Defense Authorization Act for Fiscal Year 2014, Public Law 113–66, Sec. 1095, 127 Stat. 672, 878 (2013)), which created the Military Compensation and Retirement Modernization Commission (MCRMC). To establish procedures to facilitate public interaction with MCRMC, the agency is issuing interim final regulations under FOIA.

II. Summary of Interim Final Rule

This interim final rule establishes procedures for MCRMC necessary to implement FOIA, 5 U.S.C. 552. FOIA provides for the disclosure of agency records and information to the public, unless that information is exempted under statutory exemptions or exclusions. The procedures established herein are intended to ensure that MCRMC fully satisfies its responsibility to the public to disclose agency information.

III. Procedural Requirements

These regulations establish procedures under FOIA to facilitate the interaction of the public with MCRMC. MCRMC's policy of disclosure follows the Presidential Memorandum of January 21, 2009, ''Transparency and Openness,'' 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance, advising Federal agencies to apply a presumption of openness in FOIA decision making. This interim final rule parallels the procedures currently used by other agencies to implement FOIA.

MCRMC has determined that good cause exists under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3) to waive the notice and comment and delayed effective requirements of the Administrative Procedure Act to publish this regulation as an interim final rule with a request for comments. MCRMC is a temporary, independent establishment with statutorily defined deadlines and a limited existence. It is the intent of the agency to be as transparent as practicable in making information available to the public. This regulation establishes procedures to facilitate MCRMC's interactions with the public and the public's access to information about MCRMC. In light of this agency's limited duration, as set forth in its enabling legislation, and the need for timely access, MCRMC has decided that full notice and comment rulemaking is impracticable and contrary to public policy. The absence of FOIA regulations could impair the public's ability to access information. MCRMC has determined that this interim final rule should be issued without a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply. This rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 5 CFR Part 9901

Administrative practice and procedure, Reporting and recordkeeping requirements.

■ Therefore, for reasons discussed in the preamble, the Military Compensation and Retirement Modernization Commission amends title 5 of the Code of Federal Regulations by establishing chapter XC IX, consisting of part 9901, to read as follows:

Chapter XCIX—Military Compensation and Retirement Modernization Commission

PART 9901—DISCLOSURE OF RECORDS AND INFORMATION

Sec.

Freedom of Information Act

9901.1 Authority, purpose, and scope.
9901.2 Proactive disclosure of records.
9901.3 Requests for records.
9901.4 Timing.
9901.5 Response to requests.
9901.6 Production of records.
9901.7 Appeals.
9901.8 Fees.

Authority: National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112–239, Subtitle H, 126 Stat. 1632, 1787 (2013) (amended by National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113–66, Sec. 1095, 127 Stat. 672, 878 (2013)); 5 U.S.C. 552.

Freedom of Information Act

§ 9901.1 Authority, purpose, and scope.

(a) *Authority.* This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552. This subpart should be read in conjunction with FOIA.

(b) *Purpose.* (1) The National Defense Authorization Act for Fiscal Year 2013, Public Law 112–239, Subtitle H, 126 Stat. 1632, 1787 (2013) (amended by National Defense Authorization Act for

Fiscal Year 2014, Public Law 113–66, Sec. 1095, 127 Stat. 672, 878 (2013)), established the Military Compensation and Retirement Modernization Commission (MCRMC). MCRMC's purpose, pursuant to its enabling statute, is to conduct a review of the military compensation and retirement systems and to make recommendations to modernize those systems to:

(i) Ensure the long-term viability of the All-Volunteer Force by sustaining the required human resources of that force during all levels of conflict and economic conditions;

(ii) Enable the quality of life for members of the Armed Forces and the other uniformed services and their families in a manner that fosters successful recruitment, retention, and careers for members of the Armed Forces and the other uniformed services; and

(ii) Modernize and achieve fiscal sustainability for the compensation and retirement systems for the Armed Forces and the other uniformed services for the 21st century.

(2) The Commission will make its recommendations only after it examines all laws, policies and practices of the Federal Government that result in any direct payment of authorized or appropriated funds to current and former members (veteran and retired) of the uniformed services, including the reserve components of those services, and the spouses, family members, children, survivors, and other persons authorized to receive such payments as a result of their connection to Service members.

(c) *Agency.* MCRMC is an independent establishment of the Federal government as defined by Sections 104 and 105 of Title 5 of the U.S. Code, and a temporary organization under section 3161 of such title. The Commission is composed of nine members, appointed by the President and Congressional leadership. Members of this Commission are deemed to be Federal employees. MCRMC maintains its headquarters in Arlington, Virginia.

(d) *Records on individuals.* MCRMC does not maintain any of its own systems of records on individuals. Pursuant to a Memorandum of Understanding between the Department of Defense, Director of Administration & Management and MCRMC, the Department of Defense, Washington Headquarters Services is responsible for MCRMC personnel records management including compliance with the Privacy Act.

§ 9901.2 Proactive disclosure of records.

(a) *Proactive disclosure.* Subject to the application of FOIA exemptions, 5 U.S.C. 552(b), records that are required by FOIA to be made available for public inspection and copying and records identified by the agency as records of interest to the public, including Commission hearing schedules, testimony, minutes, press releases, and documents provided to the Commission, are available on the MCRMC Web site at *http://www.mcrmc.gov.*

(b) *Final report.* The Commission's final report will be available on its Web site.

(c) *Released records.* The Commission will post records released in response to FOIA requests on its Web site.

§ 9901.3 Requests for records.

(a) *Generally.* Many documents are available on the MCRMC Web site and MCRMC encourages requesters to visit the Web site before making a request for records pursuant to this subpart. MCRMC will provide records to individual requesters in response to FOIA requests for records not available on its Web site.

(b) *Electronic or written requests required.* For records not available on the Web site, requesters wishing to obtain information from MCRMC should submit a request on the MCRMC Web site. If a computer is not available to the requester, a written request may be made to the MCRMC FOIA Officer. Such requests should be addressed to: FOIA Officer, Military Compensation and Retirement Modernization Commission, Post Office Box 13170, Arlington, VA 22209. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 697–8330 or email to *foia@mcrmc.gov.* MCRMC will communicate with the requester by email unless he or she specifies otherwise.

(c) *Contents of request.* Requests must include the following:

(1) A statement that the request is being made under FOIA, the requester's full name and address, a telephone number at which the requester can be reached during normal business hours, and an email address for the requester, if the requester has one;

(2) A description of the records sought in enough detail to allow the records to be located with a reasonable amount of effort. The request must identify/describe the records sought and include information such as date, title or name, author, recipient, and subject matter of the records sought, where possible;

(3) If submitting the request as an *educational institution,* a *non-commercial scientific institution,* or a *representative of the news media,* the request must specifically identify the organization on which the status is based, and if a free-lance representative of the news media, the requester should submit a history of past publications and/or demonstrate a solid basis for expecting publication through a news-media entity;

(4) A fee waiver, if applicable; and

(5) If the request is made by mail, the words ''FOIA REQUEST'' or ''REQUEST FOR RECORDS'' must be clearly marked on the cover letter, letter, and envelope.

(c) *Perfected requests.* MCRMC will process only perfected requests. A perfected request must meet all of the requirements of this subpart.

§ 9901.4 Timing.

(a) *Acknowledgment of request.* MCRMC will provide an acknowledgment notice with an individualized tracking number and a summary of the records requested to each requester within 10 working days after receiving a request.

(b) *Response time.* Every effort will be made to respond to the request within 20 days (excluding Saturdays, Sundays, and legal public holidays) of receiving the request.

(c) *Appeal.* MCRMC will make a decision with respect to an appeal of a denial of a request for records within 20 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of the appeal.

(d) *Clarification/Additional information.* If a request for records does not reasonably describe the records sought, MCRMC will contact the requester to seek additional information. Requesters may discuss their request with the MCRMC FOIA Public Liaison and modify the request. The MCRMC FOIA Public Liaison may be reached via telephone at (703) 692–2080 or by U.S. Mail at FOIA Public Liaison, Military Compensation and Retirement Modernization Commission, Post Office Box 13170, Arlington, VA 22209. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 697–8330 or email to *foia@mcrmc.gov.* MCRMC may make one request for clarification/additional information to the requester for information and suspend the 20-day period while awaiting such information. When a requester fails to clarify by providing additional information, MCRMC will notify the requester that the request has not been properly made and that no further action will be taken on the request. The requester may appeal such a decision under the procedures set forth in subpart 9901.7.

(e) *Expedited processing.* A request for expedited processing must accompany the initial request for records. It must be a written statement of compelling need for expedited processing, stating that the facts are true and correct to the best of the requester's knowledge and belief. In determining whether processing should be expedited, the FOIA Officer may consider whether:

(1) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to a person's life or physical safety; or

(2) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about actual or alleged Federal government activity.

(f) *Extension for unusual circumstances.* If MCRMC determines that unusual circumstances exist, the time limits described in paragraphs (b) and (c) of this subpart may be extended by no more than 10 days (excluding Saturdays, Sunday, and legal public holidays) by providing written notice of the extension to the requester. The time limit may be extended if the request cannot be processed within the time limits of this subpart due to the need to search, collect, and examine a voluminous amount of records, coordinate, or consult with another agency. The requester will be given an opportunity to limit the scope of the request or to arrange with MCRMC an alternative time frame for processing the request. The FOIA Officer shall include with the notice of extension a brief statement of the reason for the extension and the date the FOIA Officer expects to make a determination.

§ 9901.5 Response to requests.

(a) *Authority to grant or deny requests.* The MCRMC FOIA Officer is authorized to grant or deny any request for MCRMC records.

(b) *Grant of request.* If the MCRMC FOIA Officer grants a request, in full or in part, the FOIA Officer shall promptly provide the requester written notice of the decision. The requester will be notified whether the request has been assigned to the Standard or Complex track, pursuant to paragraph (d) of subpart 9901.6.

(c) *Request denial.* If the FOIA Officer denies a fee waiver request or finds there are no responsive records subject to FOIA, the FOIA Officer will notify the requester of that fact. If the FOIA Officer denies the request, in full or part, the FOIA Officer will provide the requester written notice of the denial, which will include a description of the material withheld, the FOIA exemption under which the information was withheld, and the approximate number of pages of information withheld. When a portion of a record is withheld, the amount of information redacted and the claimed exemption will be noted at the place in the record where the redaction was made. The notice will also describe the procedure for filing an appeal.

(d) *Referral of records.* When a responsive record that originated in another agency is located, the responsive record will be referred to its originating agency for response.

(e) *Referral of request.* The requester will be notified when all or part of a request is referred to another agency and will be given contact information for the FOIA office of the agency to which the request and responsive record were referred.

§ 9901.6 Production of records.

(a) *Generally.* MCRMC will apply a presumption of openness when processing FOIA requests and will only withhold exempt information if it reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions or if disclosure is prohibited by law. Before withholding information, MCRMC will conduct a foreseeable harm analysis, which clearly identifies the harm that would occur with disclosure.

(b) *Large requests.* If a request involves a voluminous amount of material or searches in multiple locations, MCRMC will provide the requester with interim responses, releasing the information on a rolling basis.

(c) *Copies.* MCRMC will maintain copies of records that have been the subject of any pending or closed request, appeal, or lawsuit under the FOIA, to include all correspondence pertaining to the subject request, until disposition is authorized under the National Archives and Records Administration's General Records Schedule 14.

(d) *Multi-Track processing.* (1) MCRMC uses a multi-track system to process FOIA requests. This means that a FOIA request is processed based on its complexity. When MCRMC receives a request it will be assigned to the *Standard* or *Complex* track.

(i) *Standard Track.* Requests that are routine and require little search time, review, or analysis are assigned to the Standard Track. MCRMC will respond to these requests in the order in which they are received and make every effort to respond no later than 20 working days after receipt of the request.

(ii) *Complex Track.* Requests that are non-routine are assigned to the Complex Track if the response may:

(A) Be voluminous;

(B) Require an unusually high level of effort for search, review, or duplication; or

(C) Cause an undue disruption to the day-to-day activities of MCRMC in carrying out its statutory responsibilities.

(2) The requester will be notified if the request is assigned to the Complex Track and will be given an estimate of the time for response. MCRMC will respond to Complex Track requests as soon as practicable. MCRMC may discuss with the requester the possibility of reformulating the request to reduce processing time.

§ 9901.7 Appeals.

(a) *Initiating appeals.* Requesters not satisfied with the FOIA Officer's decision may request review of the decision by the MCRMC FOIA Appellate Authority. The appeal must be received within 60 days of the date of the FOIA Officer's decision. Appeals may be made through the MCRMC Web site at the FOIA tab or in writing, addressed to: FOIA Appellate Authority, Military Compensation and Retirement Modernization Commission, Post Office Box 13170, Arlington, VA 22209. As there may be delays in mail delivery, it is advisable to send the request via facsimile to (703) 697–8330 or email to *foia@mcrmc.gov.* The requester may wish to explain why the Appellate Authority should grant the appeal, to the extent that an explanation could assist the Appellate Authority in making a decision on the appeal.

(b) *Appeal decisions.* MCRMC's Chief FOIA Officer will decide the appeal within 20 days (except Saturdays, Sundays, and legal public holidays) from the date it receives the appeal. If the appeal is denied, MCRMC will notify the requester in writing of the decision and the provisions for judicial review. If the appeal is granted, the Chief FOIA Officer will notify the requester in writing.

(c) *Mediation.* A response to an appeal will advise the requester of the 2007 FOIA amendments, which created the Office of Government Information Services (OGIS), which offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS at: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740; email: *ogis@nara.gov;* telephone: (202) 741–5770;

facsimile: (202) 741–5769; toll free telephone: (877) 684–6448.

§ 9901.8 Fees.

(a) *Generally.* MCRMC may charge reasonable fees that recoup the allowable direct costs incurred in responding to FOIA requests. MCRMC may assess charges for time spent searching for records even if MCRMC is unable to locate the records or if the records are located and determined to be exempt from disclosure.

(1) *Timing.* MCRMC may toll the response time limit while awaiting information from the requester regarding fee assessment. Time limits resume upon MCRMC's receipt of a response from the requester.

(b) *Definitions.* For purposes of this subpart:

(1) *All other request* means a request from or on behalf of a person who does not qualify as a *commercial use requester,* an *educational institution* requester, a *non-commercial scientific institution* requester, or a *representative of the news media requester.*

(2) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

(3) *Direct costs* means those costs incurred searching for and duplicating (and, in the case of commercial use requests, reviewing) documents in response to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches. Direct costs do not include, for example, overhead expenses such as the costs of space, and of heating or lighting a facility.

(4) *Duplication* means to copy records in response to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(5) *Educational institution* is any school that operates a program of scholarly research. Records requested with the intention of fulfilling credit requirements or completion of individual research goals do not qualify as a request by an educational institution.

(6) *Non-commercial scientific institution* means an institution that is not operated on a commercial basis and operates solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.

(8) *Review* means to examine a record to determine whether any portion of the record may be withheld, and to process a record for disclosure.

(9) *Search* means to look for and retrieve records for a FOIA request, to include looking page-by-page or line-by-line to identify responsive material within individual records. Search includes time spent looking for records even if responsive records are not found.

(c) *Reduction of fees.* (1) MCRMC will not charge fees for any request where the fees would total less than $50.

(2) MCRMC will provide, except for *commercial use requesters,* without charge, the first 100 pages of duplication (or the cost equivalent for other media) and the first two hours of a search.

(3) MCRMC shall not assess search fees if the agency fails to comply with time limits set forth in subpart 9901.4 if no unusual circumstances, as defined in subpart 9901.4, apply to the processing of the request.

(d) *Waiver of fees.* MCRMC shall waive all or part of any fee provided for in this subpart where the FOIA Officer determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and the records sought are not primarily in the commercial interest of the requester. Requests for a fee waiver must explain how the information requested contributes to the public interest. In determining whether a fee should be waived, the FOIA Officer shall consider whether the requester has demonstrated that:

(1) The subject matter of the request specifically concerns identifiable operations or activities of the Government;

(2) The information is already in the public domain;

(3) Disclosure is primarily in the commercial interest of the requester; and

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter.

(e) *Categories of requesters.* Subject to the limitations of this subpart, MCRMC will assess fees for categories of requesters as follows:

(1) *Commercial use requesters* pay for search, review, and duplication.

(2) *Educational institutions, noncommercial scientific institutions* and *representatives of the news media* pay only for duplication (excluding charges for the first 100 pages or its cost equivalent).

(3) *All other requesters* pay for search (excluding the first two hours) and duplication (excluding charges for the first 100 pages or its cost equivalent).

(f) *Charges.* In responding to FOIA requests, MCRMC will charge the following fees unless a waiver or reduction of fees has been requested and granted under this subpart. The fee amounts provided below account for direct costs.

(1) *Search and review.* For each quarter hour spent by MCRMC searching for requested records, including electronic searches, or reviewing records, the fee will be $10.77.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the restrictions of this subpart. MCRMC will honor a requester's preference for receiving a record in a particular format where it is readily reproducible in that form or format. Where photocopies are supplied, MCRMC will provide one copy per request at a cost of five cents per page. For copies of records produced on tapes, disks, or other electronic media, MCRMC will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, MCRMC will charge the direct costs.

(3) *Special charges.* MCRMC shall recover the full cost of providing special services, such as sending records by an overnight delivery service, to the extent that MCRMC elects to provide them, as special services are not required by FOIA.

(4) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is/are attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer may aggregate those requests and charge fees accordingly.

(5) *Advance payment.* When a requester has previously failed to pay fees in a timely fashion or MCRMC has determined that the fee will exceed $250, MCRMC may require advance payment of fees.

(6) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requester of the

applicable fees, the FOIA Officer shall inform the requester of where to send the payment.

Christopher Nuneviller,

Associate Director, Administration and Operations.

[FR Doc. 2014–21710 Filed 9–11–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0420; Special Conditions No. 25–565–SC]

Special Conditions: Bombardier Aerospace, Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Automatic Speed Protection for Design Dive Speed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Bombardier Aerospace Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have a novel or unusual design feature associated with a reduced margin between design cruising speed, V_C/M_C, and design diving speed, V_D/M_D, based on the incorporation of a high-speed protection system that limits nose down pilot authority at speeds above V_D/M_D. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* October 14, 2014.

FOR FURTHER INFORMATION CONTACT: Mark Freisthler, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1119; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2009, Bombardier Aerospace applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''CSeries''). The CSeries airplanes are swept-wing monoplanes with an aluminum alloy fuselage sized for 5-abreast seating. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11.

Bombardier Aerospace proposes to reduce the margin between V_C/M_C and V_D/M_D required by Title 14, Code of Federal Regulations (14 CFR) 25.335(b) based on the incorporation of a high-speed protection system in the airplane's flight control laws. The airplane is equipped with a high-speed protection system that limits nose down pilot authority at speeds above V_C/M_C and prevents the airplane from actually performing the maneuver required under § 25.335(b)(1).

These special conditions are necessary to address the proposed high-speed protection system. These special conditions identify various symmetric and non-symmetric maneuvers that will ensure that an appropriate design dive speed is established. Symmetric (pitching) maneuvers are specified in § 25.331, ''Symmetric maneuvering conditions.'' Non-symmetric maneuvers are specified in § 25.349, ''Rolling conditions,'' and § 25.351, ''Yaw maneuver conditions.''

Type Certification Basis

Under the provisions of 14 CFR 21.17, Bombardier Aerospace must show that the CSeries airplane meets the applicable provisions of part 25 as amended by Amendments 25–1 through 25–129.

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the CSeries airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The CSeries airplanes will incorporate the following novel or unusual design feature: Bombardier Aerospace proposes to reduce the margin between V_C/M_C and V_D/M_D required by § 25.335(b) based on the incorporation of a high-speed protection system in the airplane's flight control laws. The high-speed protection system limits nose down pilot authority at speeds above V_C/M_C and prevents the airplane from actually performing the maneuver required under § 25.335(b)(1).

Discussion

Section 25.335(b)(1) is an analytical envelope condition that was originally adopted in Part 4b of the Civil Air Regulations in order to provide an acceptable speed margin between design cruise speed and design dive speed. Flutter clearance design speeds and airframe design loads are impacted by the design dive speed. While the initial condition for the upset specified in the rule is 1g level flight, protection is afforded for other inadvertent overspeed conditions as well. Section 25.335(b)(1) is intended as a conservative enveloping condition for potential overspeed conditions, including non-symmetric ones. To establish that potential overspeed conditions are enveloped, Bombardier Aerospace needs to demonstrate that any reduced speed margin, based on the high-speed protection system, will not be exceeded in inadvertent or gust-induced upsets resulting in initiation of the dive from non-symmetric attitudes; or that the airplane is protected by the flight control laws from getting into non-symmetric upset conditions. Bombardier Aerospace needs to conduct a demonstration that includes a comprehensive set of conditions, as described below.

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

Discussion of Comments

Notice of Proposed Special Conditions No. 25–14–06–SC for the Bombardier Aerospace CSeries airplanes was published in the **Federal Register** on July 2, 2014 (79 FR 37674). No comments were received, and the

special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Aerospace Models BD–500–1A10 and BD–500–1A11 (CSeries) airplanes.

Automatic Speed Protection for Design Dive Speed

1. In lieu of compliance with § 25.335(b)(1), if the flight control system includes functions that act automatically to initiate recovery before the end of the 20-second period specified in § 25.335(b)(1), V_D/M_D must be determined from the greater of the speeds resulting from conditions (a) and (b) below. The speed increase occurring in these maneuvers may be calculated, if reliable or conservative aerodynamic data are used.

(a) From an initial condition of stabilized flight at V_C/M_C, the airplane is upset so as to take up a new flight path 7.5 degrees below the initial path. Control application, up to full authority, is made to try and maintain this new flight path. Twenty seconds after initiating the upset, manual recovery is made at a load factor of 1.5g (0.5g acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power, as specified in § 25.175(b)(1)(iv), is assumed until recovery is initiated, at which time power reduction and the use of pilot-controlled drag devices may be used.

(b) From a speed below V_C/M_C, with power to maintain stabilized level flight at this speed, the airplane is upset so as to accelerate through V_C/M_C at a flight path 15 degrees below the initial path (or at the steepest nose down attitude that the system will permit with full control authority if less than 15 degrees). The pilot's controls may be in the neutral position after reaching V_C/M_C and before recovery is initiated. Recovery may be initiated three seconds after operation of the high-speed warning system by application of a load of 1.5g (0.5g acceleration increment), or such greater load factor that is automatically applied by the system with the pilot's pitch control neutral. Power may be reduced simultaneously. All other means of decelerating the airplane, the use of which is authorized up to the highest speed reached in the maneuver, may be used. The interval between successive pilot actions must not be less than one second.

2. The applicant must also demonstrate that the speed margin, established as above, will not be exceeded in inadvertent or gust-induced upsets resulting in initiation of the dive from non-symmetric attitudes, unless the airplane is protected by the flight control laws from getting into non-symmetric upset conditions. The upset maneuvers described in Advisory Circular 25–7C, *Flight Test Guide for Certification of Transport Category Airplanes,* section 8, paragraph 32, sub-paragraphs c(3)(a) and (b) may be used to comply with this requirement.

3. The probability of any failure of the high-speed protection system that would result in an airspeed exceeding those determined by paragraphs 1 and 2 must be less than 10^{-5} per flight hour.

4. Failures of the system must be annunciated to the pilots. Flight manual instructions must be provided that reduce the maximum operating speeds, V_{MO}/M_{MO}. With the system failed, the operating speed must be reduced to a value that maintains a speed margin between V_{MO}/M_{MO} and V_D/M_D that is consistent with showing compliance with § 25.335(b) without the benefit of the high-speed protection system.

5. Dispatch of the airplane with the high-speed protection system inoperative could be allowed under an approved minimum equipment list that would require flight manual instructions to indicate reduced maximum operating speeds, as described in paragraph (4). In addition, the flight deck display of the reduced operating speeds, as well as the overspeed warning for exceeding those speeds, must be equivalent to that of the normal airplane with the high-speed protection system operative. Also, it must be shown that no additional hazards are introduced with the high-speed protection system inoperative.

Issued in Renton, Washington, on September 3, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21787 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0666; Notice No. 25–566–SC]

Special Conditions: Bombardier Aerospace, Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Isolation or Airplane Electronic System Security Protection From Unauthorized Internal Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Aerospace Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have novel or unusual design features, specifically, digital systems architecture composed of several connected data networks that will have the capability to allow connectivity of the passenger service computer systems to the airplane critical systems and data networks. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 12, 2014. We must receive your comments by October 27, 2014.

ADDRESSES: Send comments identified by docket number FAA–2014–0666 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West

Building Ground Floor, Washington, DC, 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

• *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–1298; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

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

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

Background

On December 10, 2009, Bombardier Aerospace applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''CSeries''). The CSeries airplanes are swept-wing monoplanes with an aluminum alloy fuselage sized for 5-abreast seating. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Bombardier Aerospace must show that the CSeries airplanes meet the applicable provisions of 14 CFR part 25 as amended by Amendments 25–1 through 25–129.

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the CSeries airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The CSeries will incorporate the following novel or unusual design features: Digital systems architecture composed of several connected data networks. This network architecture and configuration may be used for or interfaced with a diverse set of functions, including:

• Flight safety related control, communication, and navigation systems (aircraft control domain);

• Operation and administrative support (operator information services domain); and

• Passenger information and entertainment systems (passenger entertainment domain), and will have the capability to allow access to or by external network sources.

Discussion

The CSeries digital systems network architecture is different from existing production (and retrofitted) airplanes as it allows new kinds of user access to previously isolated data networks connected to systems that perform functions required for the safe operation of the airplane. This proposed data network design and integration may result in security vulnerabilities from intentional or unintentional corruption of data and systems critical to the safety and maintenance of the airplane.

The existing regulations and guidance material did not anticipate these types of system architectures or access to airplane systems. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities that could be caused by unauthorized access to airplane data busses and servers. Therefore, these special conditions are issued to ensure that the security, integrity, and availability of airplane systems are not compromised by certain wired or wireless electronic connections between airplane data busses and networks.

Applicability

As discussed above, these special conditions are applicable to the Model No. BD–500–1A10 and BD–500–1A11. Should Bombardier Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier BD–500–1A10 and BD–500–1A1 series airplanes.

Isolation or Airplane Electronic System Security Protection From Unauthorized Internal Access

1. The applicant must ensure that the design provides isolation from, or airplane electronic system security protection against, access by unauthorized sources internal to the airplane. The design must prevent inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, or other assets required for safe flight and operations.

2. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post type certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Renton, Washington, on September 3, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21788 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0698; Notice No. 25–567–SC]

Special Conditions: Bombardier Aerospace, Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Airplane Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Aerospace Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have novel or unusual design features, specifically, digital systems architecture composed of several connected networks that may allow access to or by external computer systems and networks and may result in security vulnerabilities to the airplanes' systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 12, 2014. We must receive your comments by October 27, 2014.

ADDRESSES: Send comments identified by docket number FAA–2014–0698 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1298; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

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

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

Background

On December 10, 2009, Bombardier Aerospace applied for a type certificate for their new Models BD–500–1A10 and

BD–500–1A11 series airplanes (hereafter collectively referred to as ''CSeries''). The CSeries airplanes are swept-wing monoplanes with an aluminum alloy fuselage sized for 5-abreast seating. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Bombardier Aerospace must show that the CSeries airplanes meet the applicable provisions of 14 CFR part 25 as amended by Amendments 25–1 through 25–129.

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the CSeries airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The CSeries will incorporate the following novel or unusual design features: Digital systems architecture composed of several connected networks. This network architecture and network configuration may be used for or interfaced with a diverse set of functions, including:

- Flight safety related control, communication, and navigation systems (aircraft control domain);
- Operator business and administrative support (operator information domain); and
- Passenger information and entertainment systems (passenger entertainment domain), and will have the capability to allow access to or by external network sources.

Discussion

The CSeries digital systems network architecture is novel or unusual for commercial transport airplanes as it allows connection to airplane electronic systems and networks, and access from aircraft external sources (e.g., operator networks, wireless devices, Internet connectivity, service provider satellite communications, electronic flight bags, etc.), to the previously isolated airplane electronic assets. Airplane electronic assets include electronic equipment and systems, instruments, networks, servers, software and electronic components, field-loadable software and hardware applications, databases, etc. This proposed design may result in network security vulnerabilities from intentional or unintentional corruption of data and systems required for the safety, operations, and maintenance of the airplane.

The existing regulations and guidance material did not anticipate these types of system architectures or access to airplane systems. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities that could be caused by unauthorized access to airplane data busses and servers. Therefore, these special conditions are issued to ensure that the security, integrity, and availability of airplane systems are not compromised by certain wired or wireless electronic connections between airplane data busses and networks.

Applicability

As discussed above, these special conditions are applicable to the Model No. BD–500–1A10 and BD–500–1A11. Should Bombardier Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two model series of airplanes. It is not a rule of general applicability.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier BD–500–1A10 and BD–500–1A1 series airplanes.

Airplane Electronic System Security Protection From Unauthorized External Access

1. The applicant must ensure that the airplanes' electronic systems are protected from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system security threats are identified and assessed, and that effective electronic system security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the aircraft is maintained, including all post type certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Renton, Washington, on September 3, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21789 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0329; Special Conditions No. 25–560–SC]

Special Conditions: Bombardier Aerospace, Models BD–500–1A10 and BD–500–1A11 Series Airplanes; Tire Debris Impacts to Fuel Tanks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Bombardier Aerospace, Models BD–500–1A10 and BD–500–1A11 series airplanes. These airplanes will have a novel or unusual design feature associated with the use of carbon fiber reinforced plastic (CFRP) for most of the wing fuel tank structure, which, when impacted by tire debris, may resist penetration or rupture differently from aluminum wing skins. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* October 14, 2014.

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, FAA, Propulsion and Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2677; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2009, Bombardier Aerospace applied for a type certificate for their new Models BD–500–1A10 and BD–500–1A11 series airplanes (hereafter collectively referred to as ''CSeries''). The CSeries airplanes are swept-wing monoplanes with an aluminum alloy fuselage sized for 5-abreast seating. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Bombardier Aerospace must show that the CSeries airplanes meet the applicable provisions of part 25, as amended by Amendments 25–1 through 25–129 thereto.

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the CSeries airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy under section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The CSeries airplanes will incorporate the following novel or unusual design features: The use of carbon fiber reinforced plastic (CFRP) for most of the wing fuel tank structure. The ability of aluminum wing skins to resist penetration or rupture when impacted by tire debris is understood from extensive experience, but the ability of CFRP construction to resist these hazards has not been established. There are no existing regulations that adequately establish a level of safety with respect to the performance of the composite materials used in the construction of wing fuel tanks. It requires the consideration of fuel tank penetration, fuel leaks, discrete source damage tolerance, and the effects of shock waves generated by tire debris impact.

Discussion

Accidents have resulted from uncontrolled fires caused by fuel leaks following penetration or rupture of the lower wing by fragments of tires or from uncontained engine failure. The Concorde accident in 2000 is the most notable example. That accident demonstrated an unanticipated failure mode in an airplane with an unusual transport airplane configuration. Impact to the lower wing surface by tire debris induced pressure waves within the fuel tank that resulted in fuel leakage and fire. Regulatory authorities subsequently required modifications to the Concorde to improve impact resistance of the lower wing or means to retain fuel if the primary fuel retention means is damaged.

In another incident, a Boeing Model 747 tire burst during an aborted takeoff from Honolulu, Hawaii. That tire debris penetrated a fuel tank access cover, causing substantial fuel leakage. Passengers were evacuated down the emergency chutes into pools of fuel that fortunately had not ignited.

These accidents highlight deficiencies in the existing regulations pertaining to fuel retention following impact of the fuel tanks by tire fragments. Following a 1985 Boeing Model 737 accident in Manchester, England, in which a fuel tank access panel was penetrated by engine debris, the FAA amended 14 CFR 25.963 to require fuel tank access panels that are resistant to both tire and engine debris (engine debris is addressed elsewhere). This regulation, § 25.963(e), only addressed the fuel tank access covers since service experience at the time showed that the lower wing skin of a conventional, subsonic airplane provided adequate inherent capability to resist tire and engine debris threats. More specifically, that regulation requires showing by analysis or tests that the access covers ''. . . minimize penetration and deformation by tire fragments, low energy engine debris, or other likely debris.'' Advisory Circular (AC) 25.963–1, *Fuel Tank Access Covers,* describes the region of the wing that is vulnerable to impact damage from these sources and provides a method to substantiate that the rule has been met for tire fragments. No specific requirements were established for the contiguous wing areas into which the access covers are installed, because of the inherent ability of conventional aluminum wing skins to resist penetration by tire debris. AC 25.963–1 specifically notes, ''The access covers, however, need not be more impact resistant than the contiguous tank structure,'' highlighting the assumption that the wing structure is more capable of resisting tire impact debris than fuel tank access covers.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. To maintain the level of safety envisioned by 14 CFR 25.963(e), these special conditions

establish a standard for resistance to potential tire debris impacts to the contiguous wing surfaces and require consideration of possible secondary effects of a tire impact, such as the induced pressure wave that was a factor in the Concorde accident. It takes into account that new construction methods and materials will not necessarily yield debris resistance that has historically been shown as adequate. The standard in these special conditions is based on the defined tire impact areas and tire fragment characteristics.

In addition, despite practical design considerations, some uncommon debris larger than that defined in paragraph 2 may cause a fuel leak within the defined area, so paragraph 3 of these special conditions also takes into consideration possible leakage paths. Fuel tank surfaces of typical transport airplanes have thick aluminum construction in the tire debris impact areas that is tolerant to tire debris larger than that defined in paragraph 2 of these special conditions. Consideration of leaks caused by larger tire fragments is needed to ensure that an adequate level of safety is provided.

Discussion of Comments

Notice of proposed special conditions No. 25–14–03–SC for the Bombardier Aerospace CSeries airplanes was published in the **Federal Register** on June 3, 2014, (79 FR 31886). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the BD–500–1A10 and BD–500–1A11 series airplanes. Should Bombardier Aerospace apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Aerospace Models BD–500–1A10 and BD–500–1A11 series airplanes.

Tire Debris Impacts to Fuel Tanks

1. Impacts by tire debris to any fuel tank or fuel system component located within 30 degrees to either side of wheel rotational planes may not result in penetration or otherwise induce fuel tank deformation, rupture (for example, through propagation of pressure waves), or cracking sufficient to allow a hazardous fuel leak. A hazardous fuel leak results if debris impact to a fuel tank surface causes a—

a. Running leak,

b. Dripping leak, or

c. Leak that, 15 minutes after wiping dry, results in a wetted airplane surface exceeding 6 inches in length or diameter.

The leak must be evaluated under maximum fuel head pressure.

2. Compliance with paragraph 1 must be shown by analysis or tests assuming all of the following:

a. The tire debris fragment size is 1 percent of the tire mass.

b. The tire debris fragment is propelled at a tangential speed that could be attained by a tire tread at the airplane flight manual airplane rotational speed (V_R at maximum gross weight).

c. The tire debris fragment load is distributed over an area on the fuel tank surface equal to 1½ percent of the total tire tread area.

3. Fuel leaks caused by impact from tire debris larger than that specified in paragraph 2, from any portion of a fuel tank or fuel system component located within the tire debris impact area defined in paragraph 1, may not result in hazardous quantities of fuel entering any of the following areas of the airplane:

a. Engine inlet,

b. Auxiliary power unit inlet, or

c. Cabin air inlet.

This must be shown by test or analysis, or a combination of both, for each approved engine forward thrust condition and each approved reverse thrust condition.

Issued in Renton, Washington, on September 3, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21786 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0647; Directorate Identifier 2014–CE–027–AD; Amendment 39–17967; AD 2014–18–03]

RIN 2120–AA64

Airworthiness Directives; APEX Aircraft Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for APEX Aircraft Model R 3000/160 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as small pieces of paint from the engine air intake box blocking the engine carburetor. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective October 17, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 17, 2014.

We must receive comments on this AD by October 27, 2014.

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

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

For service information identified in this AD, contact CEAPR, Bureau de Navigabilité, 1 route de Troyes, 21121 DAROIS—France, telephone: (33) 380 35 25 22; fax: (33) 380 35 25 25; email: *www.info@ceapr.com;* internet: *http://ceapr.com/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901

Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0647; 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 (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; email: *sarjapur.nagarajan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued MCAI EASA AD No. 2014–0155, dated July 2, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

An accident occurred on a DR 400 aeroplane during take-off phase. Technical investigations showed paint adherence defects inside the engine air intake box, Part Number 56.15.01.000. It was determined that the engine carburettor had been blocked by small pieces of paint from the engine air intake box, so that the engine could not deliver its maximum power and the performance of the aeroplane, notably during take-off, had been significantly degraded.

This condition, if not detected and corrected, could lead to an engine failure, possibly resulting in loss of control of the aeroplane.

To initially address this issue, DGAC France published AD 1999–053 (later revised) to require inspection of the engine air intake box. After that AD was issued, cohesion defects were found inside the laminated air ducting from engine filter to engine air intake box. Prompted by these findings, DGAC France issued AD 1999–470 to require inspection of the engine laminated air ducting.

Since DGAC France AD 1999–053 R1 and AD 1999–470 were issued, several engine failures and malfunctions have occurred due to the same root causes. Consequently, CEAPR issued SB N° 161 Revision 3 to provide more detailed inspection and replacement instructions.

For the reasons described above, this AD retains the requirements of DGAC France AD 1999–053 R1 and AD 1999–470, which are superseded, and requires repetitive inspections and, depending on findings, replacement of the engine air intake box and engine air ducting in accordance with the revised instructions.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0647.

Relevant Service Information

CEAPR has issued Mandatory Service Bulletin Number 161R3, dated September 6, 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 the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there are no airplanes currently on the U.S. registry and thus, does not have any impact upon the public. Therefore, we find that notice and opportunity for prior public comment are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0647; Directorate Identifier 2014–CE–027–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 will affect 0 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $0, or $0 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $2,970, for a cost of $3,055 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

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:

2014–18–03 APEX Aircraft: Amendment 39–17967; Docket No. FAA–2014–0647; Directorate Identifier 2014–CE–027–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 17, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to APEX Aircraft Models R 3000/160 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 73: Engine Fuel & Control.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as paint adherence defects inside the engine air intake box leading to small pieces of paint from the engine air intake box blocking the engine carburetor. We are issuing this AD to detect and correct paint adherence defects inside the engine air intake box leading to small pieces of paint from the engine air intake box blocking the engine carburetor. This condition, if not detected and corrected, could lead to an engine failure, possibly resulting in loss of control.

(f) Actions and Compliance

Unless already done, do the following actions, as specified in paragraphs (f)(1) through (f)(4) of this AD:

(1) Within 110 hours time-in-service (TIS) after October 17, 2014 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 110 hours TIS, accomplish a visual and tactile inspection of the engine air intake box (including the deflection flap) and the engine air ducting (including the area located downstream of the filter) following the Accomplishment Instructions section of CEAPR Mandatory Service Bulletin Number 161R3, dated September 6, 2012.

(2) If any paint damage such as bubbling, blistering, peeled off areas or paint detachment is found during any inspection required by paragraph (f)(1) of this AD, before further flight, replace each damaged part with an airworthy part following the Accomplishment Instructions section of CEAPR Mandatory Service Bulletin Number 161R3, dated September 6, 2012.

(3) Replacement of damaged parts on an airplane, as required by paragraph (f)(2) of this AD, does not constitute terminating action for the repetitive inspections required by paragraph (f)(1) of this AD for that airplane.

(4) As of October 17, 2014 (the effective date of this AD), do not install on any airplane a painted engine air intake box or repaired engine air ducting.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; email: *sarjapur.nagarajan@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2014–0155, dated July 2, 2014, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0647.

(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) CEAPR Mandatory Service Bulletin Number 161R3, dated September 6, 2012.

Note 1 to paragraph (i)(2)(i) of this AD: The service bulletin contains French to English translation. EASA used the English translation in referencing the document from CEAPR. For enforceability purposes, we will cite references to the CEAPR service information as it appears on the document.

(ii) Reserved.

(3) For CEAPR service information identified in this AD, contact CEAPR, Bureau de Navigabilité, 1 route de Troyes, 21121 DAROIS–France, telephone: (33) 380 35 25 22; fax: (33) 380 35 25 25; email: *www.info@ceapr.com;* internet: *http://ceapr.com/.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(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 Kansas City, Missouri, on August 29, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21270 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0088; Directorate Identifier 2011–NM–233–AD; Amendment 39–17703; AD 2013–25–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2007–18–09 for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2007–18–09 required repetitive inspections of the upper support of the nose landing gear (NLG), and related investigative and corrective actions if necessary; and also provided an optional terminating action for the

repetitive inspections. This new AD adds installation of a new enhanced manufacturing and maintainability (EMM) braking and steering control unit (BSCU) standard, and adds airplanes to the applicability. This AD was prompted by a determination that previously allowed terminating actions no longer address the unsafe condition and that a new terminating action is necessary. We are issuing this AD to prevent landings with the NLG turned 90 degrees from centerline, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective October 17, 2014.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 17, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of October 11, 2007 (72 FR 51164, September 6, 2007).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 30, 2005 (70 FR 70715, November 23, 2005).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docket Detail;D=FAA-2013-0088;* 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 Airbus, Airworthiness Office—EIAS, 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.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007), which superseded AD 2005–24–06, Amendment 39–14386 (70 FR 70715, November 23, 2005). AD 2007–18–09 applied to all Airbus Model A318, A319, A320, and A321 series airplanes. The NPRM published in the **Federal Register** on February 8, 2013 (78 FR 9341). The NPRM was prompted by a determination that previously allowed terminating actions no longer address the identified unsafe condition and that a new terminating action is necessary. The NPRM proposed to continue to require repetitive inspections of the upper support of the NLG, and related investigative and corrective actions if necessary; and also provided a new optional terminating action for the repetitive inspections. The NPRM also proposed to install a new EMM BSCU standard, and add airplanes to the applicability. We are issuing this AD to prevent landings with the NLG turned 90 degrees from centerline, which could result in reduced controllability of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0201, dated October 13, 2011 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> In 2005, an A320 aeroplane experienced a landing with the Nose Landing Gear (NLG) wheels rotated at 90 degrees to the aeroplane centreline.
>
> Investigation showed that the upper support of the NLG shock absorber was damaged and the anti-rotation lugs were ruptured. This caused the nose wheels to lose their centred position reference. The affected Braking and Steering Control Unit (BSCU) had logged a steering system fault because hydraulic power was not available at the time of steering system checks, therefore the BSCU was not able to proceed with the re-centring of the wheels. Failure to centre the NLG wheels correctly may result in a failure of the NLG to retract.
>
> To prevent further landing incidents with NLG wheels rotated at 90 degrees, [Direction Générale de l'Aviation Civile] DGAC France issued AD F–2005–191 [(*http://ad.easa.europa.eu/blob/easa_ad_2005_6411_F20051910tb_superseded.pdf/AD_F–2005–191_1*) which corresponds to FAA AD 2005–24–06, Amendment 39–14386 (70 FR 70715, November 23, 2005)] to require the implementation of an operational procedure and the accomplishment of certain maintenance actions.
>
> EASA AD 2006–0174, [(*http://ad.easa.europa.eu/blob/easa_ad_2006_0174_superseded.pdf/AD_2006–0174_2*) which corresponds to FAA AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007)] which superseded AD F–2005–191, was issued to extend the applicability and to introduce repetitive boroscope inspections of the NLG upper support lugs and cylinder lugs which have been driven by EMM BSCU L4.1 (Part Number (P/N) E21327001) or L4.5 (P/N E21327003) and, corrective actions, depending on findings.
>
> Since that [EASA] AD was issued, Airbus has demonstrated the acceptability of installing EMM BSCU L4.9B (P/N E21327006 or P/N E21327106) or conventional BSCU std 10 (P/N C202163392E34) or conventional BSCU std 10.1 (P/N C202163392E35) as terminating action for the actions required by EASA AD 2006–0174, for aeroplanes fitted with twin wheel Main Landing Gear (MLG) units.
>
> For the reasons described above, this [EASA] AD retains some of the requirements of EASA AD 2006–0174, which is superseded, extends the applicability to all A318, A319, A320 and A321 aeroplanes, requires the installation of BSCU L4.9B, or BSCU std 10, or BSCU std 10.1 for in service aeroplanes fitted with twin wheel MLG, which constitutes terminating action for the repetitive inspections and checks required by this [EASA] AD.
>
> Installation of a NLG with new upper support anti-rotation lugs and new cylinders lugs, or installation of a NLG for which it can be demonstrated that it was never driven by EMM BSCU L4.1 or L4.5, is no longer considered as terminating action for the requirements of this [EASA] AD.

The unsafe condition is the NLG turning 90 degrees from centerline, which could result in reduced controllability of the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!document Detail;D=FAA-2013-0088-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

Support for the NPRM (78 FR 9341, February 8, 2013)

United Airlines (UAL) stated that it concurs with the FAA's assertion that terminating action should consist of BSCU standard L4.9B, standard 10, or standard 10.1, rather than standard L4.1 or L4.5.

Statement of Compliance With the NPRM (78 FR 9341, February 8, 2013)

UAL stated that it is currently in the process of upgrading its BSCU to the enhanced EMM version specified in the NPRM (78 FR 9341, February 8, 2013) and is 81 percent complete.

Request for Alternative Actions

UAL stated that the NPRM (78 FR 9341, February 8, 2013) mandates accomplishment of the BSCU replacement within 6 months after the

effective date of the AD, and that it is concerned the vendor may not be able to support this relatively short deadline with sufficient numbers of enhanced BSCUs. UAL asserted that a more feasible solution with an acceptable level of safety would be:

- Continue repetitive inspections of the upper support of the nose landing gear (NLG) until replacement with the EMM BSCU.
- Continue repetitive inspections of the NLG for airplanes on which the terminating action per AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007)—standard L4.1, L4.5, or L5–2 was done previously.
- Upgrade to the standard L4.9B, standard 10, or standard 10.1, could then be accomplished on attrition, as units are available from the BSCU manufacturer.

We disagree with the commenter's request. The compliance time for modification of EMM BSCU standard L4.9B was determined after conducting a risk assessment and determining the effect of associated risk on the worldwide fleet. We have determined that for twin wheel MLG, the repetitive inspection of the NLG upper support lugs and missing cylinder cannot be relied upon indefinitely until replacement with EMM BSCU standard L4.9B or applicable alternatives specified in paragraph (w) of this AD by attrition. Modification is not required by paragraph (v) of this AD for airplanes installed with bogie MLG. Only airplanes fitted with twin wheel MLG must do the modification within 6 months.

The compliance time was also established taking into consideration availability of parts. Operators have multiple options to install EMM BSCU standards in accordance with paragraph (w) of this AD. However, according to the provisions of paragraph (bb)(1) of this AD, we might approve requests to adjust the compliance time or allow alternative actions if the requests include substantiation that the new compliance time or alternative actions would provide an acceptable level of safety. We have not changed this final rule in this regard.

"Contacting the Manufacturer" Paragraph in This AD

Since late 2006, we have included a standard paragraph titled "Airworthy Product" in all MCAI ADs in which the FAA develops an AD based on a foreign authority's AD.

We have become aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it "Contacting the Manufacturer." This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the EASA, or Airbus's EASA Design Organization Approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA-approved, unless EASA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are "Required for Compliance" with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

We also have decided not to include a generic reference to either the "delegated agent" or "design approval holder (DAH) with State of Design Authority design organization approval," but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH throughout this AD.

Additional Changes Made to This Final Rule

We have removed Note 1 to paragraph (i) of the proposed AD (78 FR 9341, February 8, 2013) and included that information in paragraph (i) of this AD. This change does not affect the intent of paragraph (i) of this AD.

We have also revised paragraph (m) of this AD to remove a reference to Chapter 32 of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual (AMM). As of the effective date of this AD, operators must contact the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA; as specified in paragraph (bb)(1) of this AD for approval to use this document. We also added a new Note 1 to paragraph (m) of this AD, which specifies that guidance for doing the installation required by paragraph (m) of this AD may be found in Chapter 32 of the Airbus A318/A319/A320/A321 AMM.

In addition, we have clarified paragraph (o) of this AD to indicate which part numbers correspond to which EMM units.

We removed Note 2 to paragraph (p) of the proposed AD (78 FR 9341, February 8, 2013) and included that information in new paragraph (aa)(3) of this AD. We have redesignated subsequent paragraphs accordingly. This change does not affect the intent of paragraph (p) of this AD.

We removed Note 3 to paragraph (r) of the proposed AD (78 FR 9341, February 8, 2013) and included that information in paragraph (r) of this AD. This change does not affect the intent of paragraph (r) of this AD.

Also, we revised paragraph (x) of the proposed AD (78 FR 9341, February 8, 2013) to indicate that accomplishing a modification specified in paragraph (w) of this AD is also a terminating action for the inspections required by paragraph (t) of this AD.

Paragraph (y) of the proposed AD (78 FR 9341, February 8, 2013) included a typographical error in the exception phrase. We have revised this AD to clarify the exception by specifying "Except for the prohibition specified in paragraph (z) of this AD. . . ."

Conclusion

We reviewed the available data, including 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 changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 9341, February 8, 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 9341, February 8, 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 about 755 products of U.S. registry.

The actions that are retained from AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007), take about 3 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the actions that were required by AD 2007–18–09 is $255 per product.

We estimate that it will take 35 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. 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 $2,246,125, or $2,975 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD. We have no way of determining the number of products that might need these actions.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products 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-2013-0088;* 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 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 removing Airworthiness Directive (AD) 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007), and adding the following new AD:

2013–25–07 Airbus: Amendment 39–17703. Docket No. FAA–2013–0088; Directorate Identifier 2011–NM–233–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective October 17, 2014.

(b) Affected ADs

This AD replaces AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007).

(c) Applicability

This AD applies to the Airbus airplanes listed in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, certificated in any category, all serial numbers.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by a report of an airplane landing with the nose landing gear (NLG) turned 90 degrees from centerline, and from additional reports of upper support anti-rotation lugs of the NLG rupturing in service. We are issuing this AD to prevent landings with the NLG turned 90 degrees from centerline, which could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Records Review

This paragraph restates the requirements of paragraph (f) of AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007). Within 5 days after November 30, 2005 (the effective date of AD 2005–24–06, Amendment 39–14386 (70 FR 70715, November 23, 2005)), perform a records review to determine whether the airplane is equipped with or has ever been equipped with an enhanced manufacturing and maintainability (EMM) braking and steering control unit (BSCU) having part number (P/N) E21327001 (standard L4.1, installed by Airbus Modification 26965 or Airbus Service Bulletin A320–32–1912) or P/N E21327003 (standard L4.5, installed by Airbus Modification 33376 or Airbus Service Bulletin A320–32–1261). Airbus Service Bulletin A320–32–1310, dated February 8, 2006, is one approved method for doing the records review.

(h) Retained Statement of No Further Action Required After Records Review

This paragraph restates a provision from paragraph (g) of AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007). For airplanes on which a records review required by paragraph (g) of this AD conclusively determines that the airplane is not and never has been equipped with a BSCU P/N E21327001 or P/N E21327003, no further action is required by paragraphs (i), (j), (k), (l), and (m) of this AD.

(i) Retained AFM Revision

This paragraph restates the requirements of paragraph (h) of AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007). For airplanes that are not specified in paragraph (h) of this AD and on which Airbus Modification 31152 has not been incorporated in production (i.e., applicable only to aircraft with steering powered by the green hydraulic system): Within 10 days after November 30, 2005 (the effective date of AD 2005–24–06, Amendment 39–14386 (70 FR 70715, November 23, 2005)), revise the Limitation Section of the Airbus A318/319/320/321 AFM to include the following information. This may be done by inserting a copy of figure 1 to paragraph (i) of this AD into the AFM. Accomplishment of the actions required by paragraph (r) of this AD terminates the requirements of this paragraph, and the AFM limitation required by this paragraph must be removed. When a statement identical to that in figure 1 to paragraph (i) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of figure 1 to paragraph (i) of this AD or AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007), may be removed from the AFM.

BILLING CODE 4910–13–P

Figure 1 to Paragraph (i) of this AD - *Retained AFM Revision*

The ECAM message, in case of a nose wheel steering failure, will be worded as follows:

- "WHEEL N/W STRG FAULT" for aircraft with the FWC E3 and subsequent standards

-"WHEEL N.W. STEER FAULT" for aircraft with the FWC E2 Standard.

■ If the L/G SHOCK ABSORBER FAULT ECAM caution is triggered at any time in flight, and the WHEEL N/W STRG FAULT ECAM caution is triggered after the landing gear extension:

When all landing gear doors are indicated closed on ECAM WHEEL page, reset the BSCU:

- A/SKID&N/W STRG---------- OFF THEN ON

If the WHEEL N/W STRG FAULT ECAM caution is no longer displayed, this indicates a successful nose wheel re-centering and steering recovery.

- Rearm the AUTO BRAKE, if necessary.

If the WHEEL N/W STRG FAULT ECAM caution remains displayed, this indicates that the nose wheel steering remains lost, and that the nose wheels are not centered.

- During landing, delay nose wheel touchdown for as long as possible.

- Refer to the ECAM STATUS.

■ If the WHEEL N/W STRG FAULT ECAM caution appears, without the L/G SHOCK ABSORBER FAULT ECAM caution:

- No specific crew action is requested by the WHEEL N/W STRG FAULT ECAM caution procedure.

- Refer to the ECAM STATUS.

BILLING CODE 4910–13–C

(j) Retained Inspection Thresholds

This paragraph restates the requirements of paragraph (i) of AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007), with specific delegation approval language. For airplanes that are not specified in paragraph (h) of this AD: At the earlier of the times specified in paragraphs (j)(1) and (j)(2) of this AD, do a special detailed inspection (boroscopic) for broken or cracked NLG upper support lugs and missing cylinder lugs, and do all applicable related investigative/corrective actions before further flight. Do all actions in accordance with Airbus Technical Note 957.1901/05, dated October 18, 2005; or the Accomplishment Instructions of Airbus Service Bulletin A320–32–1310, dated February 8, 2006. After October 11, 2007 (the effective date of AD 2007–18–09), only Airbus Service Bulletin A320–32–1310, dated February 8, 2006, may be used. Where Airbus Service Bulletin A320–32–1310, dated February 8, 2006,

specifies that restoring the NLG is necessary in accordance with Airbus recommendations, this AD requires restoring the NLG in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). Repeat the inspection thereafter at the applicable interval specified in paragraph (k) or (l) of this AD until the inspection required by paragraph (t) of this AD is accomplished.

(1) Within 100 flight cycles following an ECAM caution L/G SHOCK ABSORBER FAULT associated with at least one of the following CFDS messages specified in paragraph (j)(1)(i), (j)(1)(ii), or (j)(1)(iii) of this AD. As of the effective date of this AD, for the conditions specified in paragraph (j)(1) of this AD, do the actions required by paragraph (r) of this AD.

(i) N L/G EXT PROX SNSR 24GA TGT POS.

(ii) N L/G EXT PROX SNSR 25GA TGT POS.

(iii) N L/G SHOCK ABSORBER FAULT 2526GM.

(2) At the later of the times specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this AD.

(i) Within 20 months, 6,000 flight hours, or 4,500 flight cycles since the date of issuance of the original French standard airworthiness certificate or the original French export certificate of airworthiness, whichever occurs first.

(ii) Within 6 months, 1,800 flight hours, or 1,350 flight cycles after October 11, 2007 (the effective date of AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007)), whichever occurs first.

(k) Retained Repetitive Inspection Intervals for BSCU Standard L4.1 or L4.5

This paragraph restates the requirements of paragraph (j) of AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007). For airplanes not specified in paragraph (h) of this AD that are equipped with EMM BSCU standard L4.1 or L4.5: Repeat the inspection specified in paragraph (j) of this AD thereafter at intervals not to exceed the earliest of 6 months, 1,800 flight hours, 1,350 flight cycles, or 100 flight cycles following certain ECAM cautions and CFDS messages, as specified in paragraph (j)(1) of this AD.

(l) Retained Repetitive Inspection Intervals for BSCU Standard L4.8 or Non-EMM BSCU

This paragraph restates the requirements of paragraph (k) of AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007). For airplanes not specified in paragraph (h) of this AD that are equipped with EMM BSCU standard L4.8 or a non-EMM BSCU: Repeat the inspection specified in paragraph (j) of this AD thereafter at intervals not to exceed the earliest of 20 months, 6,000 flight hours, 4,500 flight cycles, or 100 flight cycles following certain ECAM cautions and CFDS messages, as specified in paragraph (j)(1) of this AD.

(m) Retained Optional Terminating Action With Limiting Date Restriction

This paragraph restates the requirements of paragraph (l) of AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007), with a limiting date restriction and specific delegation approval language. For airplanes that are not specified in paragraph (h) of this AD: Installation of an NLG with new upper support anti-rotation lugs and new cylinder lugs, or installation of an NLG that was never driven by EMM BSCU standard L4.1 or L4.5, combined with installation of EMM BSCU standard L4.8 or a non-EMM BSCU, before the effective date of this AD, constitutes terminating action for the requirements of paragraphs (g), (h), (i), (j), (k), and (l) of this AD. Do the installations in accordance with a method approved by the Manager, International Branch, ANM–116; or EASA; or Airbus's EASA DOA.

Note 1 to paragraph (m) of this AD: Guidance for doing the installation required by paragraph (m) of this AD may be found in Chapter 32 of the Airbus A318/A319/A320/A321 Airplane Maintenance Manual.

(n) Retained Statement of No Reporting Requirement

This paragraph restates the requirements of paragraph (m) of AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007). Although Airbus Service Bulletin A320–32–1310, dated February 8, 2006, specifies sending certain inspection results to Airbus, this AD does not include that requirement.

(o) New Part Number Identification

For the purpose of this AD, the following part numbers are identified.

(1) P/N E21327001 installed by Airbus Modification 26965 or by Airbus Service Bulletin A320–32–1912 in service stands for EMM BSCU L4.1.

(2) P/N E21327003 installed by Airbus Modification 33376 or Airbus Service Bulletin A320–32–1261 in service stands for EMM BSCU L4.5.

(3) P/N E21327004 installed by Airbus Modification 35216 or Airbus Service Bulletin A320–32–1305 or Airbus Service Bulletin A320–32–1343/AOT A320–32A1343 in service stands for EMM BSCU L4.8.

(4) P/N E213270B1 installed by Airbus Modification 31931 or Airbus Service Bulletin A320–32–1206 stands for EMM BSCU L5–2.

(5) P/N E21327006 installed by Airbus Modification 38973 or Airbus Service Bulletin A320–32–1350 or Airbus Service Bulletin A320–32–1361 stands for EMM BSCU L4.9B.

(6) P/N E21327106 installed by Airbus Modification 151575 or Airbus Service Bulletin A320–32–1387 stands for EMM BSCU L4.9B.

(7) P/N C202163392E34 installed by Airbus Service Bulletin A320–32–1336 or Airbus Service Bulletin A320–32–1360 stands for conventional BSCU standard 10.

(8) P/N C202163392E35 installed by Airbus Service Bulletin A320–32–1369 stands for conventional BSCU standard 10.1.

(p) New Records Review

Within 5 days after the effective date of this AD: Perform a records review to determine whether the airplane is equipped with or has ever been equipped with an EMM BSCU having P/N E21327001 (standard L4.1, installed by Airbus Modification 26965, or Airbus Service Bulletin A320–32–1912); or P/N E21327003 (standard L4.5, installed by Airbus Modification 33376, or Airbus Service Bulletin A320–32–1261); or P/N E21327004 (standard L4.8, installed by Airbus Modification 35216, or Airbus Service Bulletin A320–32–1305, or Airbus Service Bulletin A320–32–1343/AOT A320–32A1343); or P/N E213270B1 (standard L5–2, installed by Airbus Modification 31931, or Airbus Service Bulletin A320–32–1206).

(q) New Statement of No Further Action Required After Records Review

For airplanes on which a records review required by paragraph (p) of this AD conclusively determines that the airplane is not and never has been equipped with an EMM BSCU having P/N E21327001, P/N E21327003, P/N E21327004, or P/N E213270B1, no further action is required by paragraphs (r) and (s) of this AD.

(r) New AFM Revision

For airplanes that are not identified in paragraph (q) of this AD and on which Airbus Modification 31152 has not been incorporated in production (i.e., applicable only to aircraft with steering powered by the green hydraulic system): Within 10 days after the effective date of this AD, revise the Limitation Section of the Airbus A318/319/320/321 AFM to include the following information. This revision may be done by inserting a copy of figure 2 to paragraph (r) of this AD into the AFM. Accomplishment of the actions required by this paragraph terminates the requirements of paragraph (i) of this AD, and the AFM revision required by paragraph (i) of this AD must be removed. When a statement identical to that in figure 2 to paragraph (r) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of figure 2 to paragraph (r) of this AD may be removed from the AFM.

BILLING CODE 4910–13–P

Figure 2 to Paragraph (r) of this AD – *New AFM Revision*

The ECAM message, in case of a nose wheel steering failure, will be worded as follows:

- "WHEEL N/W STRG FAULT" for airplanes with Flight Warning Computer (FWC) software post E3P.

- "WHEEL N.W. STEER FAULT" for airplanes with FWC software pre E3P.

■ If the L/G SHOCK ABSORBER FAULT ECAM caution is triggered at any time in flight, and the WHEEL N/W STRG FAULT ECAM caution is triggered after the landing gear extension:

• When all landing gear doors are indicated closed on ECAM WHEEL page, reset the BSCU:

- A/SKID&N/W STRG---------- OFF THEN ON

• If the WHEEL N/W STRG FAULT ECAM caution is no longer displayed, this indicates a successful nose wheel re-centering and steering recovery.

- Rearm the AUTO BRAKE, if necessary.

• If the WHEEL N/W STRG FAULT ECAM caution remains displayed, this indicates that the nose wheel steering remains lost, and that the nose wheels are not centered.

- During landing, delay nose wheel touchdown for as long as possible.

- Refer to the ECAM STATUS.

■ If the WHEEL N/W STRG FAULT ECAM caution appears, without the L/G SHOCK ABSORBER FAULT ECAM caution:

- No specific crew action is requested by the WHEEL N/W STRG FAULT ECAM caution procedure.

- Refer to the ECAM STATUS.

Note: For airplanes fitted with pre FWC E3P standard, read N.W STEER instead of N/W STRG.

BILLING CODE 4910–13–C

(s) New Inspection Following Certain Centralized Fault Display System Messages

(1) For airplanes other than those identified in paragraph (q) of this AD: Within 100 flight cycles following an ECAM caution L/G SHOCK ABSORBER FAULT associated with at least one of the following CFDS messages specified in paragraph (s)(1)(i), (s)(1)(ii), or (s)(1)(iii) of this AD, do the actions specified in paragraph (s)(2) of this AD.

(i) N L/G EXT PROX SNSR 24GA TGT POS.

(ii) N L/G EXT PROX SNSR 25GA TGT POS.

(iii) N L/G SHOCK ABSORBER FAULT 2526GM.

(2) For airplanes identified in paragraph (s)(1) of this AD: Do the actions specified in paragraphs (s)(2)(i) and (s)(2)(ii) of this AD.

(i) Check the NLG strut inflation pressure, weight-off-wheels, and weight-on-wheels, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1310, Revision 01, dated June 23, 2011, and before further flight, do all applicable corrective actions and adjustments, in accordance with Airbus A318/A319/A320/A321 Airplane Maintenance Manual Task 12–12–32–610–001–A, Check NLG Shock Absorber Fluid Level and Charge Pressure

(''Two-Point Check''—Aircraft on Jacks to start), Revision August 1, 2012.

(ii) Do a boroscopic inspection for broken or cracked NLG upper support lugs and missing or cracked cylinder lugs, and do all applicable related investigative and corrective actions before further flight. Do all actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1310, Revision 01, dated June 23, 2011. Where Airbus Service Bulletin A320–32–1310, Revision 01, dated June 23, 2011, specifies restoring the NLG in accordance with Airbus recommendations, this AD requires restoring the NLG before further flight, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(t) New Initial Boroscopic Inspection

At the applicable times specified in paragraphs (t)(1) and (t)(2) of this AD: Do a boroscopic inspection for broken or cracked NLG upper support lugs and missing or cracked cylinder lugs, and do all applicable related investigative and corrective actions before further flight. Do all actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1310, Revision 01, dated June 23, 2011. Where Airbus Service Bulletin A320–32–1310, Revision 01, dated June 23, 2011, specifies restoring the NLG in accordance with Airbus recommendations, this AD requires restoring the NLG before further flight, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. Accomplishment of the actions required by this paragraph terminate the requirements of paragraphs (j), (k), and (l) of this AD.

(1) For airplanes fitted with twin wheel main landing gear (MLG) that have been equipped with EMM BSCU standard L4.1, L4.5, or L4.8: At the later of the times specified in paragraphs (t)(1)(i) and (t)(1)(ii) of this AD.

(i) Within 20 months, or 6,000 flight hours, or 4,500 flight cycles since first flight of the airplane, whichever occurs first.

(ii) Within 6 months, or 1,800 flight hours, or 1,350 flight cycles after the effective date of this AD, whichever occurs first.

(2) For airplanes fitted with bogie MLG: At the later of the times specified in paragraphs (t)(2)(i) and (t)(2)(ii) of this AD.

(i) Within 20 months, or 6,000 flight hours, or 4,500 flight cycles after the installation of EMM BSCU standard L5–2, whichever occurs first.

(ii) Within 6 months, or 1,800 flight hours, or 1,350 flight cycles after the effective date of this AD, whichever occurs first.

(u) New Repetitive Boroscopic Inspections

After accomplishing the inspection specified in paragraph (t) of this AD: Repeat the inspection required by paragraph (t) of this AD thereafter at the applicable interval specified in paragraphs (u)(1), (u)(2), and (u)(3) of this AD.

(1) For airplanes fitted with twin wheel MLG that have been equipped with EMM BSCU standard L4.8: At intervals not to exceed 20 months, or 6,000 flight hours, or 4,500 flight cycles, whichever occurs first.

(2) For airplanes fitted with twin wheel MLG that have been equipped with EMM BSCU standard L4.1 or L4.5: At intervals not to exceed 6 months, or 1,800 flight hours, or 1,350 flight cycles, whichever occurs first.

(3) For airplanes fitted with bogie MLG: At intervals not to exceed 20 months, or 6,000 flight hours, or 4,500 flight cycles, whichever occurs first.

(v) New Modification

For airplanes fitted with twin wheel MLG: Within 6 months after the effective date of this AD, modify the airplane by installing EMM BSCU standard L4.9B, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1350, dated July 31, 2008.

(w) New Optional Method of Modification

Doing a modification specified in paragraph (w)(1), (w)(2), or (w)(3) of this AD, is acceptable for compliance with the requirements of paragraph (v) of this AD.

(1) Modification of the airplane by installing EMM BSCU standard L4.9B, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1387, dated April 7, 2011.

(2) Modification of the airplane by installing conventional EMM BSCU standard 10, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1360, dated March 18, 2009; or Airbus Service Bulletin A320–32–1336, Revision 01, dated January 10, 2008.

(3) Modification of the airplane by installing conventional EMM BSCU standard 10.1, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1369, Revision 01, dated March 31, 2010.

(x) New Terminating Action

In-service modification of an airplane fitted with twin wheel MLG, as required by paragraph (v) or as specified in paragraph (w) of this AD, constitutes terminating action for the initial and repetitive inspections required by paragraph (t) of this AD. In addition, the AFM changes required by paragraph (r) of this AD may be removed from the AFM, and the requirements of paragraph (s) of this AD are no longer required.

(y) New Exception From Certain Actions

Except for the prohibition specified in paragraph (z) of this AD, airplanes that have been delivered with Airbus Modification 38973 and/or Airbus Modification 151575 that install EMM BSCU standard L4.9B are not affected by the requirements of this AD, provided that no installation of previous EMM BSCU standard L4.1, L4.5, or L4.8 has been performed since the first flight of the airplane.

(z) New Parts Installation Prohibition

For airplanes on which EMM BSCU L4.1, or EMM BSCU L4.5, or EMM BSCU L4.8 is not installed: As of the effective date of this AD, no person may modify any airplane by installing EMM BSCU standard L4.1, L4.5, or L4.8.

(aa) Credit for Previous Actions

(1) This paragraph restates the requirements of paragraph (n) of AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007). This paragraph provides credit for the inspections required by paragraph (j) of this AD, if those inspections were performed before October 11, 2007 (the effective date of AD 2007–18–09), using Chapter 12, Subject 12–14–32, of the Airbus A318/A319/A320/A321 AMM, as revised by Airbus A318/A319/A320/A321 AMM Temporary Revision 12–001, dated November 13, 2005, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the inspections and related investigative/corrective actions required by paragraphs (j), (k), and (l) of this AD, if those inspections were performed before the effective date of this AD using Airbus Service Bulletin A320–32–1310, dated February 8, 2006.

(3) This paragraph provides credit for the records review required by paragraph (p) of this AD, if the review was performed before the effective date of this AD using Airbus Service Bulletin A320–32–1310, Revision 01, dated June 23, 2011.

(4) This paragraph provides credit for the modifications specified in paragraph (w)(2) of this AD, if those modifications were performed before the effective date of this AD using Airbus Service Bulletin A320–32–1336, dated September 19, 2007, which is not incorporated by reference in this AD.

(5) This paragraph provides credit for the modifications required by paragraph (w)(3) of this AD, if those modifications were performed before the effective date of this AD using Airbus Service Bulletin A320–32–1369, dated March 22, 2009, which is not incorporated by reference in this AD.

(bb) 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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) 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.

(ii) AMOCs approved previously for AD 2007–18–09, Amendment 39–15189 (72 FR 51164, September 6, 2007), are not approved as AMOCs with this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement

in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(cc) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2011–0201, dated October 13, 2011, for related information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA–2013–0088–0002.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (dd)(6) and (dd)(7) of this AD.

(dd) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR October 17, 2014.

(i) Airbus A318/A319/A320/A321 Airplane Maintenance Manual Task 12–12–32–610–001–A, Check NLG Shock Absorber Fluid Level and Charge Pressure (''Two-Point Check''—Aircraft on Jacks to start), Revision August 1, 2012.

(ii) Airbus Service Bulletin A320–32–1310, Revision 01, dated June 23, 2011.

(iii) Airbus Service Bulletin A320–32–1336, Revision 01, dated January 10, 2008.

(iv) Airbus Service Bulletin A320–32–1350, dated July 31, 2008.

(v) Airbus Service Bulletin A320–32–1360, dated March 18, 2009.

(vi) Airbus Service Bulletin A320–32–1369, Revision 01, dated March 31, 2010.

(vii) Airbus Service Bulletin A320–32–1387, dated April 7, 2011.

(4) The following service information was approved for IBR on October 11, 2007 (72 FR 51164, September 6, 2007).

(i) Airbus Service Bulletin A320–32–1310, dated February 8, 2006.

(ii) Reserved.

(5) The following service information was approved for IBR on November 30, 2005 (70 FR 70715, November 23, 2005).

(i) Airbus Technical Note 957.1901/05, dated October 18, 2005.

(ii) Reserved.

(6) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 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.*

(7) You may review copies of the 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.

(8) 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 November 29, 2013.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21552 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket Number: 140821699–4699–01]

RIN 0607–AA53

Foreign Trade Regulations (FTR): Reinstatement of Exemptions Related to Temporary Exports, Carnets, and Shipments Under a Temporary Import Bond

AGENCY: Bureau of the Census, Commerce Department.

ACTION: Interim final rule.

SUMMARY: The Bureau of the Census (Census Bureau) issues this interim final rule to amend its regulations to eliminate the reporting requirement for temporary exports, which includes carnets, and goods previously imported on a Temporary Importation Under Bond (TIB). In the Final Rule published in the **Federal Register** on March 14, 2013, the Census Bureau removed the exemptions for temporary exports, which includes carnets and goods imported under a TIB. This amendment reinstates exemptions for temporary exports/carnets and for goods that were imported under a TIB for return in the same condition as when imported. As a result, these types of shipments are exempt from filing, except as noted in the Foreign Trade Regulations (FTR).

DATES: *Effective date:* This interim final rule is effective September 12, 2014.

Comment date: To be assured consideration, written comments must be received on our before October 14, 2014.

ADDRESSES: Please direct all written comments on this interim final rule to the Chief, Foreign Trade Division, U.S. Census Bureau, Room 6K032, Washington, DC 20233–6010. You may also submit comments, identified by RIN 0607–AA53 or by the eRulemaking docket number USBC–2014–0003, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. The Census Bureau will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Dale C. Kelly, Chief, Foreign Trade Division, U.S. Census Bureau, Room 6K032, Washington, DC 20233–6010, by phone (301) 763–6937, by fax (301) 763–8835, or by email <*dale.c.kelly@census.gov*>.

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau is responsible for collecting, compiling, and publishing export trade statistics for the United States under the provisions of Title 13, United States Code (U.S.C.), Chapter 9, Section 301. The Automated Export System (AES) is the primary instrument used for collecting export trade data, which are used by the Census Bureau for statistical purposes. Through the AES, the Census Bureau collects Electronic Export Information (EEI), the electronic equivalent of the export data formerly collected on the Shipper's Export Declaration, pursuant to the Foreign Trade Regulations (FTR), Title 15, Code of Federal Regulations (CFR), part 30. Filing in the AES is not required for shipments excluded in Section 30.2(d) and shipments exempted in Subpart D that are not subject to Section 30.2(a)(1)(iv).

The Census Bureau published a Final Rule in the **Federal Register** on March 14, 2013 (78 FR 16366) that removed the exemptions for carnets and other temporary exports and goods previously imported under a Temporary Import Bond (TIB) exported in the same condition; it became effective April 5, 2014. In other words, this rule created an AES filing requirement for previously exempted items, such as carnets. With respect to eliminating these exemptions, the Department of the Treasury raised concerns and members of the trade community submitted

letters to the Census Bureau regarding the new AES filing requirement for carnets, an international customs document that permits the tax-free and duty-free temporary export and import of goods for up to one year, and goods previously imported under a TIB. The comments centered on the concern that mandatory AES filing for carnets may be contrary to the Customs Convention on the ATA carnet for the Temporary Admission of Goods (ATA Convention), to which the U.S. is a contracting party. In addition, the trade community stated that, unless the exemptions were reinstated, it would be extremely difficult to comply with the FTR, particularly for goods moving on a foreign carnet. Since receiving this feedback, the Census Bureau and U.S. Customs and Border Protection (CBP) have reviewed this issue and determined that it is necessary to reinstate the exemptions from filing for temporary exports, including carnets, and goods that were previously imported under a TIB for return in the same condition as when exported. However, the Census Bureau and CBP will review these exemptions in partnership with the trade and may publish a Notice of Proposed Rulemaking to address temporary exports, carnets, and TIBs in the future.

Program Requirements

The Census Bureau is amending the following section of the FTR:

- Revise § 30.37(q) and (r) to reinstate the exemptions from AES filing for temporary exports, including carnets, and goods that were temporarily imported under a TIB for return in the same condition are exempt from AES filing.

Rulemaking Requirements

Administrative Procedure Act

The Census Bureau finds good cause pursuant to Title 5, United States Code (U.S.C.), 553(b)(B) to waive prior notice and opportunity for public comment, as it is impracticable and contrary to the public interest. The Census Bureau is undertaking this amendment in response to comments from the public indicating that the current regulations may be contrary to the conditions of the Customs Convention on the ATA Carnets for the Temporary Admission of Goods (ATA Convention). In particular, members of the international trade community and the Department of the Treasury noted that the elimination of the AES filing exemptions for temporary exports, including carnets, may be contrary to the agreement by signatory nations to require such transactions to be filed in the AES. Removing the exemptions from filing may make the United States' regulations inconsistent with those of other signatory nations. This conflict could potentially lead other nations to implement additional filing requirements for carnets, thus impeding international trade. In addition, for goods moving on a foreign carnet, it is unclear who would file the required documentation, making it extremely difficult to comply with the FTR. It would be impracticable to allow for prior notice and opportunity for public comment as any such delay would prolong the Unites States' possible inconsistency with the terms of the ATA Convention. For these reasons, this rule reinstates the previous filing exemptions in § 30.37(q) and (r) of the FTR for temporary exports, including carnets, and goods that were imported under a TIB for return in the same condition as when imported. In doing so, this rule ensures consistency with the ATA Convention, reduces the filing requirement, avoids confusion, and eases compliance with the FTR.

Additionally, and for similar reasons, the Census Bureau finds good cause pursuant to 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness for this rule. This rule allows for an exemption to the AES filing requirements. This rule also imposes no additional requirements or obligations on any member of the public, and so delaying its effectiveness is unnecessary. Therefore, the Census Bureau has determined that it will make this rule effective on September 12, 2014.

Regulatory Flexibility Act

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and one has not been prepared.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. It has been determined that this rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act

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 (PRA), unless that collection of information displays a current and valid Office of Management and Budget (OMB) control number. This rule contains a collection-of-information subject to the requirements of the PRA that has been approved under OMB control number 0607–0152.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 15 CFR part 30 is amended as follows:

PART 30—FOREIGN TRADE REGULATIONS

■ 1. The authority citation for part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan 5 of 1990 (3 CFR 1949–1953 Comp., p.1004); Department of Commerce Organization Order No. 35–2A, July 22, 1987, as amended, and No. 35–2B, December 20, 1996, as amended; and Public Law 107–228, 116 Stat. 1350.

■ 2. Amend § 30.37 by adding paragraphs (q) and (r) to read as follows:

§ 30.37 Miscellaneous exemptions.

* * * * *

(q) Temporary exports, except those that require licensing, whether shipped or hand carried, (e.g., carnet) that are exported from and returned to the United States in less than one year (12 months) from the date of export.

(r) Goods previously imported under a Temporary Import Bond for return in the same condition as when imported including: Goods for testing, experimentation, or demonstration; goods imported for exhibition; samples and models imported for review or for taking orders; goods imported for participation in races or contests, and animals imported for breeding or exhibition; and goods imported for use by representatives of foreign governments or international organizations or by members of the armed forces of a foreign country. Goods that were imported under bond for processing and reexportation are not covered by this exemption.

* * * * *

Dated: September 4, 2014.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2014–21779 Filed 9–11–14; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 679

[Docket No. 130530519–4742–02]

RIN 0648–BD35

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; American Fisheries Act; Amendment 106

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

ACTION: Final rule.

SUMMARY: NMFS adopts a final rule to implement Amendment 106 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP). Amendment 106 is necessary to bring the BSAI FMP into conformity with the amendments to the American Fisheries Act (AFA) in the Coast Guard Authorization Act of 2010 (Coast Guard Act). This rule allows the owner of an AFA vessel to rebuild or replace an AFA vessel without any limitation on the length, weight, or horsepower of the rebuilt or replacement vessel when the rebuilt or replacement vessel is operating in the Bering Sea and Aleutian Islands Management Area (BSAI). This rule also allows the owner of an AFA catcher vessel in an inshore cooperative to remove the vessel from the cooperative and assign the Bering Sea pollock catch history of the removed vessel to one or more vessels in the cooperative. This action is also intended to improve vessel safety and operational efficiency in the AFA fleet by allowing the rebuilding or replacement of AFA vessels with safer and more efficient vessels and by allowing the removal of inactive catcher vessels from the AFA fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the AFA, the BSAI FMP, and other applicable laws.

DATES: Effective October 14, 2014.

ADDRESSES: An electronic copy of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA or Analysis) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *https://alaskafisheries.noaa.gov/cm/analyses/.* An electronic copy of the Proposed Rule (79 FR 34696, June 18, 2014) may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *https://alaskafisheries.noaa.gov/regs/summary.htm.*

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted to NMFS at the above address and by email to *OIRA_submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Mary Alice McKeen, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries of the BSAI in the Exclusive Economic Zone off Alaska under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the BSAI FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. Regulations implementing the BSAI FMP appear at 50 CFR part 679. Unless noted otherwise, all references to regulations in this rule are to regulations in Title 50 of the CFR.

This final rule implements Amendment 106 to the BSAI FMP. Under this rule, the owner of an AFA vessel may rebuild or replace an AFA vessel without any limitation on the length, weight, or horsepower of the rebuilt or replacement vessel when the rebuilt or replacement vessel is operating in the BSAI. Under this rule, the owner of an AFA catcher vessel in an inshore cooperative may remove the vessel from the inshore cooperative and assign the Bering Sea pollock catch history of the removed vessel to one or more vessels in the cooperative to which the removed vessel belonged.

NMFS published the Notice of Availability of Amendment 106 in the **Federal Register** on June 3, 2014 (79 FR 31914), with a 60-day comment period that ended on August 4, 2014. The Secretary approved Amendment 106 on September 2, 2014, after determining that Amendment 106 is consistent with the national standards in section 304 of the Magnuson-Stevens Act, other provisions of the Magnuson-Stevens Act, the AFA, and other applicable laws.

NMFS published a proposed rule to implement Amendment 106 on June 18, 2014 (79 FR 34696). The 45-day comment period on the proposed rule ended August 4, 2014. NMFS received six comment letters on Amendment 106, the proposed rule, or the Regulatory Impact Review (RIR) for this action. Two letters were from the same commenter. The letters addressed ten topics. NMFS summarizes and responds to these comments in the section of this preamble, ''Comments on the FMP Text or the Proposed Rule.''

NMFS made three changes in the final rule. First, NMFS fixed an error, which was an incorrect reference in the proposed rule to another part of the proposed rule. Second, in response to the same comment from two commenters, NMFS changed the time period after the loss of a vessel during which an AFA vessel owner may replace or remove a vessel and not experience suspension of the fishing privileges of the lost vessel. NMFS changed it from a three-year time period to a five-year time period. Third, in response to a comment, NMFS clarified that this rule does not state the effect of removing an AFA catcher vessel from an inshore cooperative on fishing history of the removed vessel in the Pacific whiting fishery because that fishery occurs outside the EEZ off Alaska. NMFS explains these changes in the section of this preamble, ''Changes from the Proposed Rule.''

The Secretary approved this final rule after determining that it is consistent with the BSAI FMP, including Amendment 106; the Magnuson-Stevens Act; and other applicable laws.

In the preamble to the proposed rule, NMFS provided a detailed review of the proposed rule implementing Amendment 106 (79 FR 34696, June 18, 2014). NMFS described the key provisions of the original AFA; described the provisions in the original AFA that strictly limited the replacement of AFA vessels; described the AFA amendments in the Coast Guard Act; described the history of Council action; and described in detail the provisions of the proposed rule (79 FR at 34697–34707). NMFS does not repeat those descriptions here. The proposed rule is available on the NMFS Alaska Region Web site (see Addresses). In this preamble, NMFS summarizes the original AFA, the AFA amendments in the Coast Guard Act, and the key elements of the final rule. In this preamble, all references to regulations are to regulations in Title 50 of the CFR.

Original AFA

The AFA was adopted in 1998. The original AFA is available on the NMFS Alaska Region Web site: *https://alaskafisheries.noaa.gov/sustainablefisheries/afa/afa1998.pdf.* The original AFA had two subtitles. Subtitle I pertained to the issuance of Federal fishery endorsements generally. Subtitle II pertained to the management of the Bering Sea pollock fishery. The United States Coast Guard, in conjunction with the Maritime Administration (MARAD), implements Subtitle I. NMFS implements Subtitle II.

Under Subtitle I, unless a vessel already had a Federal fishery endorsement as of September 25, 1997, a vessel could not receive a Federal fishery endorsement if it exceeded any of the statutory thresholds in the AFA: 165 feet in registered length, 750 gross registered tons, or engines capable of producing more than 3,000 shaft horsepower. All AFA vessels had Federal fishery endorsements as of September 25, 1997. Therefore, these statutory limits did not deprive any existing AFA vessel of a Federal fishery endorsement.

Subtitle II of the original AFA made significant changes in the management of the Bering Sea pollock fishery in five areas. The original AFA established sector allocations in the BSAI pollock fishery; determined eligible vessels and processors; allowed the formation of cooperatives; set limits on the participation of AFA vessels in other fisheries; and imposed special catch weighing and monitoring requirements on AFA vessels. These features of the original AFA are described in more detail in the preamble to the proposed rule (79 FR 34696, 34697–34698, June 18, 2014).

With respect to replacing AFA vessels, the original AFA explicitly prohibited the replacement of AFA vessels except under conditions specified in section 208(g) of the original AFA. The most stringent restriction in section 208(g) was that an owner of an AFA vessel could only replace an AFA vessel in the event of an ''actual total loss or a constructive total loss'' of the original AFA vessel. Thus, under the original AFA, a vessel owner could not replace an original AFA vessel until the AFA vessel sunk or was so damaged that it could not economically be repaired. An AFA vessel owner could not replace an original AFA vessel with another vessel simply because the vessel owner wanted a vessel that was safer, more fuel-efficient, or more operationally efficient in any way.

Further, if an owner of an AFA vessel did lose an AFA vessel, section 208(g) of the original AFA limited the length, tonnage, and horsepower of the replacement vessel. If the original AFA vessel exceeded any of the statutory thresholds for receiving a Federal fishery endorsement (165 feet registered length, 750 gross registered tons, or 3,000 shaft horsepower engines), the replacement vessel could not exceed the length, tonnage, or horsepower of the original AFA vessel. If the original AFA vessel was less than any of the statutory thresholds, the replacement vessel could exceed the length, weight, or horsepower of the original AFA vessel by 10 percent, but only up to the statutory thresholds of length, weight, or horsepower in the AFA.

As for rebuilding an original AFA vessel, the original AFA had no explicit provisions that allowed the owner of an AFA vessel to rebuild the vessel and maintain the vessel's AFA permit and the vessel's Federal fishery endorsement. As for removing an AFA vessel, the original AFA did not provide a mechanism for a vessel owner to remove an AFA catcher vessel from an inshore cooperative even if the catcher vessel was doing no or little actual fishing for the cooperative.

Thus, under the original AFA, if an owner of an AFA vessel wanted to replace, rebuild, or remove an AFA vessel, the owner was under severe restrictions for replacing, faced uncertainty with regard to rebuilding, and simply could not remove a vessel. These provisions of the original AFA limited the ability of the owners of AFA vessels to deal with an aging fleet. Of the 92 AFA catcher vessels active in the inshore and mothership sectors in 2011, all were built before 1992. Sixty were built before 1980 (Analysis, Table 1–7). Of the 21 catcher/processors with AFA permits, all were built before 1990. Fifteen were built before 1980 (Analysis, Table 1–26).

AFA as Amended by the Coast Guard Act

The AFA amendments in the Coast Guard Act amended the provisions of the original AFA that pertain to the issuance of Federal fishery endorsements. The AFA amendments allow AFA rebuilt and replacement vessels to receive a Federal fishery endorsement, even if the vessel did not have a Federal fishery endorsement as of September 25, 1997 (46 U.S.C. 12113(d)(2)(C)). Thus, an AFA rebuilt and AFA replacement vessel may now receive a Federal fishery endorsement even if the vessel exceeds the statutory thresholds for length, weight, and horsepower: 165 feet registered length, 750 gross registered tons, or 3,000 shaft horsepower. MARAD has proposed a rule to implement this provision in the AFA amendments (79 FR 33160, June 10, 2014).

The AFA amendments in the Coast Guard Act amended provisions of the original AFA that pertain to the management of the Bering Sea pollock fishery. The AFA amendments in the Coast Guard Act allow the rebuilding, replacement, and removal of AFA vessels to improve the safety and efficiency of the AFA fleet. Amendment 106 to the BSAI FMP adopts the provisions of the AFA amendments in the Coast Guard Act that pertain to the management of the Bering Sea pollock fishery. This final rule adopts the regulatory changes necessary to implement Amendment 106.

Key Elements of This Rule

With respect to rebuilding and replacement, the final rule allows the owner of an AFA vessel to rebuild or replace an AFA vessel as long as the AFA rebuilt vessel or the AFA replacement vessel has a Federal fishery endorsement. Under the AFA Amendments to the Coast Guard Act, an AFA rebuilt or replacement vessel may receive a Federal fishery endorsement irrespective of the vessel's length, weight, or horsepower. Therefore, under the final rule, the owner of an AFA vessel may rebuild or replace an AFA vessel and receive an AFA permit on the rebuilt or replacement vessel without any limit on the length, weight, or horsepower of the AFA rebuilt or replacement vessel.

An AFA rebuilt vessel will have the same privileges and will be subject to the same restrictions as the vessel before rebuilding except (1) the AFA rebuilt vessel will not be subject to the maximum length overall (MLOA) restriction on a License Limitation Program (LLP) license with a Bering Sea or Aleutian Islands area endorsement when the AFA rebuilt vessel is operating in the BSAI, even if the vessel before rebuilding was subject to the MLOA restriction; and (2) an AFA rebuilt catcher vessel that is 125 feet length overall (LOA) or greater will be subject to the season restrictions in § 679.23 even if the vessel before rebuilding was less than 125 feet LOA and was not subject to those restrictions. These provisions are added by the final rule at § 679.4(l)(7)(i).

An AFA replacement vessel will have the same privileges and will be subject to the same restrictions as the vessel it is replacing except (1) the AFA replacement vessel will not be subject to

the MLOA restriction on an LLP license with a Bering Sea or Aleutian Islands area endorsement when the AFA replacement vessel is operating in the BSAI, even if the replaced vessel was subject to the MLOA restriction; (2) an AFA replacement catcher vessel that is 125 feet LOA or greater will be subject to the season restrictions in § 679.23 even if the AFA replaced vessel was less than 125 feet LOA and was not subject to those restrictions; and (3) an AFA catcher vessel that is exempt from sideboard restrictions will maintain its sideboard exemption even if the vessel also becomes a replacement vessel for a vessel that did not have a sideboard exemption. These provisions are added by the final rule at § 679.4(l)(7)(ii).

The final rule at § 679.4(l)(1)(ii)(B) addresses the situation of an owner of an AFA vessel that loses an AFA vessel. The final rule provides that the owner of an AFA vessel has a reasonable, but not unlimited, time to replace or remove a lost AFA vessel and specifies that, during that time, the AFA permit on the lost vessel shall remain valid. The final rule allows the owner of an AFA vessel to maintain the AFA permit on the lost vessel for up to five years from December 31 of the year in which the vessel was lost.

The final rule does not lessen the significant restrictions in the AFA and in current regulations that apply to AFA vessels when those vessels participate in the Gulf of Alaska (GOA). Critically, this rule does not affect the requirement that an AFA vessel—whether an original AFA vessel, an AFA rebuilt vessel, or an AFA replacement vessel—may only operate in the GOA if the AFA vessel is the named vessel on an LLP license, the AFA vessel is operating in an area for which the LLP license has an area endorsement, and the AFA vessel does not exceed the MLOA restriction on that license.

With respect to removal, this final rule at § 679.4(l)(7)(iii) allows the owner of an AFA catcher vessel in an inshore cooperative to remove that vessel from the cooperative and assign the Bering Sea pollock catch history of the removed vessel to another vessel or vessels in the cooperative. The vessels that receive the catch history must remain in the cooperative for at least one year from the date on which NMFS approves the removal of the vessel and assigns catch history to the receiving vessels.

Under the final rule at § 679.4(l)(7)(iv), the privilege of replacing and removing an AFA vessel comes with a significant restriction. A replaced or removed AFA vessel cannot receive a permit to operate in any fishery in the Exclusive Economic Zone (EEZ) off Alaska unless the replaced or removed AFA vessel reenters the pollock fishery as a replacement AFA vessel. The restriction in the AFA amendments in the Coast Guard Act is actually more far-reaching, namely a replaced or removed AFA vessel cannot receive a Federal fishery endorsement at all unless the replaced or removed AFA vessel reenters the pollock fishery as a replacement AFA vessel (section 208(g)(5), section 210(b)(7)(B)). As noted, the United States Coast Guard, in conjunction with MARAD, will implement the restrictions in the AFA amendments on issuing Federal fishery endorsements.

Changes From the Proposed Rule

NMFS made three changes in the regulatory text of the final rule from the regulatory text of the proposed rule (79 FR 34696, June 18, 2014). NMFS made the first change as a result of internal review and made the second and third changes in response to public comments.

First, NMFS fixed an error. The regulatory text of the proposed rule in § 679.4(l)(7)(iii), ''Removal of AFA catcher vessel from the directed pollock fishery,'' stated in § 679.4(l)(7)(iii)(A): ''The owner of a catcher vessel that is designated on an AFA catcher vessel permit with an inshore endorsement may remove the catcher vessel from the directed pollock fishery, subject to the requirements in paragraph (B), (C), (D), and (E) of this paragraph (l)(7)(iii).'' The reference to paragraph (E) was an error because there was no paragraph (E). The final rule removes the reference to paragraph (E) in § 679.4(l)(7)(iii)(A).

Second, NMFS changed the period during which the owner of an AFA lost vessel may replace or remove the lost vessel while maintaining without interruption the AFA permit and fishing privileges of the lost vessel. The proposed rule at § 679.4(l)(1)(ii)(B)(*3*) would have established a 3-year period from December 31 of the year in which the vessel was lost. In the proposed rule, after the 3-year period, NMFS would suspend the AFA permit on the lost vessel if the owner had not replaced or removed the lost vessel but, after the 3-year period, would still process an application by the owner of the lost AFA vessel to replace or remove the lost vessel. The final rule keeps the process the same but changed § 679.4(l)(1)(ii)(B)(*3*) from a 3-year period to a 5-year period. NMFS made this change in response to the same comment from two persons, which is described in Comment 3.

Third, NMFS clarified that the rule does not purport to state the effect of removal of AFA catcher vessels on any catch history that the removed vessel may have earned outside of the EEZ off Alaska. To do this, NMFS added the phrase ''in the Exclusive Economic Zone off Alaska'' after ''all claims relating to the catch history of the removed catcher vessel'' in § 679.4(l)(7)(iii)(C) so that the paragraph now reads: ''Except for the assignment of the pollock catch history of the removed catcher vessel in paragraph (l)(7)(iii)(B) of this section, all claims relating to the catch history of the removed catcher vessel in the Exclusive Economic Zone off Alaska, including any claims to an exemption from AFA sideboard limitations, will be permanently extinguished upon NMFS' approval of the application to remove the catcher vessel and the AFA permit that was held by the owner of the removed catcher vessel will be revoked.'' NMFS made this change in response to a public comment described in Comment 5 that raised the issue with regard to the fishing history of a removed vessel in the Pacific whiting fishery, which occurs outside the EEZ off Alaska.

Comments on the FMP Text, the Proposed Rule, and the RIR for This Action

NMFS received six letters with comments on Amendment 106, the proposed rule, or the Regulatory Review (RIR) for this action. Two letters were from the same commenter. These comments addressed 10 topics. The comments were from individual owners of AFA vessels, an industry group representing owners of AFA vessels, an owner of Amendment 80 vessels, and an industry group representing owners of Amendment 80 vessels.

Comment 1: NMFS received several comments of support for various aspects of the proposed rule. Three commenters supported allowing the owners of AFA vessels to rebuild or replace vessels to improve vessel safety or efficiency. Two commenters appreciated that the rule addressed the status of AFA permits after an AFA vessel is lost. Two commenters supported the prohibition on AFA replaced vessels participating in other fisheries. One commenter appreciated that the owner of an AFA vessel could remove the AFA vessel from fishing.

Response: NMFS notes this support.

Comment 2: The proposed definition of an AFA vessel is as follows: ''An AFA vessel means a vessel that is designated on an AFA catcher vessel permit, an AFA catcher/processor permit, or an

AFA mothership permit, and is thereby authorized to participate in the Bering Sea directed pollock fishery.'' NMFS actually issues two types of AFA catcher/processor permits: A listed AFA catcher/processor permit and an unlisted AFA catcher/processor permit. The definition should be changed to specifically reflect the two types of AFA catcher/processor permits.

Response: NMFS acknowledges that under § 679.4(l)(2), it issues two types of AFA catcher/processor permits: (1) A listed AFA catcher/processor permit for AFA catcher/processors that were listed by name in the original AFA at section 208(e)(1) to (20), and (2) an unlisted AFA catcher/processor permit for AFA catcher/processors that were not listed by name but met the criteria in section 208(e)(21) of the original AFA. Only one catcher/processor, the *Ocean Peace,* received an unlisted AFA catcher/processor permit.

NMFS recognizes that the AFA and implementing regulations impose some restrictions on listed AFA catcher/processors that do not apply to the unlisted AFA catcher/processor. For example, section 211 of the original AFA imposed restrictions on listed AFA catcher/processors from harvesting and processing in fisheries besides Bering Sea pollock that did not apply to an unlisted AFA catcher/processor. The commenter pointed out that the proposed rule loosely referred to the ''Limits on AFA vessels in other fisheries'' in section 211 (79 FR 34696, 34698) whereas the explicit limits in section 211 apply to listed AFA catcher/processors, not unlisted AFA catcher/processors.

NMFS, however, does not see any need to change the definition of an AFA vessel in the final rule for two reasons. First, the definition in the proposed rule is accurate. An AFA catcher/processor is designated on an AFA catcher/processor permit. It is simply that there are two types of AFA catcher/processor permits: A listed AFA catcher/processor permit or an unlisted AFA catcher/processor permit.

Second, the definition in the proposed rule is not misleading because the proposed rule is clear that a replacement vessel is subject to the same requirements that applied to the replaced vessel. A replacement vessel for a vessel that was designated on a listed AFA catcher/processor permit will receive a listed AFA catcher/processor permit. A replacement vessel for a vessel that was designated on an unlisted AFA catcher/processor permit will receive an unlisted AFAcatcher/processor permit. The proposed rule stated at § 679.4(l)(7)(ii)(B) that the owner of a replacement vessel ''will be subject to the same requirements that applied to the replaced vessel and will be eligible to use the AFA replacement vessel in the same manner as the replaced vessel,'' subject to three specific exceptions not relevant to this comment.

The proposed rule carefully changed the prohibitions in § 679.7(k) so that all the prohibitions that applied to ''listed AFA catcher/processors,'' which might be read to apply only to the AFA catcher/processors listed as eligible in the original AFA, now apply to listed AFA catcher/processors and ''catcher/processors designated on listed AFA catcher/processor permits.'' Similarly, the proposed rule carefully changed the prohibitions in § 679.7(k) so that all the prohibitions that applied to ''unlisted AFA catcher/processors'' now apply to unlisted AFA catcher/processors and ''catcher/processors designated on unlisted AFA catcher/processor permits.'' With regard to observer requirements in § 679.51, the proposed rule made the same change in § 679.51(a)(2)(vi)(B(*1*) and (*3*) so that all the requirements that applied to ''listed AFA catcher/processors'' now also apply to ''catcher/processors designated on listed AFA catcher/processor permits,'' and all requirements that applied to ''unlisted AFA catcher/processors'' now also apply to ''catcher/processors designated on unlisted AFA catcher/processor permits.''

Comment 3: Two commenters stated that the owner of an AFA vessel should be allowed 5 years from December 31 of the year in which the vessel was lost to maintain, without interruption, the AFA permit and fishing privileges of the lost vessel. The proposed rule contained a 3-year period. The commenters gave five reasons in favor of a 5-year period rather than a 3-year period. First, the owner will have to deal with a crisis in the company's operations when a vessel was lost. This includes a Coast Guard investigation, insurance claims and settlements, and possibly other claims associated with the loss. Second, the owner has to consult and contract with a vessel design/architect firm, equipment vendors, and a shipyard to plan and build a new vessel. One commenter noted that the owner is under an obligation to rebuild the vessel in American shipyards. Third, the owner will need to obtain financing. Fourth, after a contract is signed, the shipyard has to schedule time and space to build the vessel, purchase the necessary material and equipment, and then build the vessel. Fifth, if the owner was lost at sea, the settlement of the owner's estate can take over a year.

Response: NMFS agrees with this comment. NMFS concludes that the reasons advanced by the commenters justify a 5-year period. Therefore, NMFS changed the final rule in § 679.4(l)(1)(ii)(B)(*3*) to allow the owner of an AFA vessel up to 5 years from December 31 of the year in which the vessel was lost to maintain, without interruption, the AFA permit and fishing privileges of the lost vessel. NMFS notes that, in the proposed rule, it specifically invited comment on whether the 3-year period was adequate to allow the owner of a lost vessel to replace the vessel (79 FR 34696 and 34705, June 18, 2014).

Comment 4: If the owner of a lost AFA catcher vessel does not apply to replace the vessel within the 5-year period, NMFS will suspend the AFA permit and fishing privileges of the lost vessel. After the 5-year period, the owner of the lost vessel may still apply to replace the lost vessel. If the owner of a lost catcher vessel in an inshore cooperative applies to replace a lost catcher vessel after the 5-year period, the owner of the AFA vessel should be required to transfer the permit to a vessel in the cooperative of which the lost vessel was a member when the vessel was lost. Such a provision would help keep the system of inshore cooperatives intact.

Response: NMFS does not make any change in the proposed rule in response to this comment for three reasons. First, the AFA amendments did not limit the ability of the owner of an AFA vessel to select an AFA replacement vessel. The AFA amendments in section 208(g)(1) allow the owner of an AFA vessel to rebuild or replace an AFA vessel ''in order to improve vessel safety or operational efficiency'' and provide that the rebuilt or replacement vessel ''shall be eligible in the same manner and subject to the same restrictions and limitations'' as the vessel being rebuilt or replaced. The AFA amendments did not require the owner of any AFA vessel to choose a replacement from a particular category of vessels. Accordingly, NMFS did not propose that requirement in the proposed rule and does not think it is appropriate to include that requirement in the final rule.

Second, the AFA amendments in section 210(b)(7)(A)(ii) did expressly require that if the owner of an AFA vessel wanted to remove a vessel from an inshore cooperative, the owner had to assign the catch history of the removed vessel to another vessel or vessels in the cooperative and those vessels had to remain in that cooperative for at least one year after the

removed vessel left the cooperative. Accordingly, the proposed and final rule contain that restriction at § 679.4(l)(7)(iii)(D). But the AFA amendments included no such express restriction on the ability of the owner of an AFA vessel to select a replacement vessel.

Third, the regulations restrict which inshore cooperative a replacement vessel may join and thus already provide an incentive for stability in cooperative membership. For an inshore cooperative to include the catch history attached to a replacement catcher vessel in the cooperative application, the vessel must meet the requirements in § 679.4(l)(6) to be a qualified catcher vessel for that cooperative. Under § 679.4(l)(6), a vessel is only qualified to be a member of a cooperative if the vessel meets the landing and permit requirements for cooperative membership in the vessel's last year of participation or is an AFA replacement vessel for a catcher vessel that met the permit and landing requirements. Thus, if the lost vessel could only have been a member of a particular inshore cooperative, the replacement vessel for the lost vessel initially can only be a member of that same cooperative, even if NMFS approves the replacement after the 5-year period. The replacement vessel stands in the shoes of the replaced vessel for cooperative membership and for other fishing privileges, even if the replaced vessel is a vessel that was lost more than five years before the vessel owner seeks to make the replacement.

Comment 5: The AFA amendments wisely allow the owners of AFA catcher vessels to remove vessels in the Fishery Exit Provisions. The proposed rule states that all claims relating to the catch history of a removed vessel shall be extinguished. The proposed rule properly extinguishes the exemption from AFA sideboards of a removed vessel. But the proposed rule is too broad if NMFS extinguishes the following claims of a removed vessel: A claim to Rockfish Quota Share; a claim to future catch shares in a GOA catch share program; a claim to catch shares in a Pacific whiting fishery limited access program.

Response: With respect to any aspect of the history of an AFA vessel in the Pacific whiting fishery, the comment alerted NMFS to the fact that the proposed rule at § 679.4(l)(7)(iii)(C) might be read to extinguish the history of an AFA vessel in that fishery. NMFS did not intend that. This rule will become part of 50 CFR part 679. Part 679 applies, and only can apply, to fisheries of the EEZ off Alaska. The Pacific whiting fishery does not occur in the EEZ off Alaska. This fishery occurs in the area of the EEZ within the jurisdiction of the Pacific Council as described in section 302 of the Magnuson-Stevens Act, namely ''fisheries of the Pacific Ocean seaward of [California, Oregon, Washington, and Idaho]. NMFS therefore changed § 679.4(l)(7)(iii)(C) to clarify that it applies to fishing history earned in the EEZ off Alaska.

NMFS notes that the provision requiring extinguishment of claims based on the catch history of a removed vessel applies to permits that would enable the owner of the vessel to receive permits in any fishery anywhere within the EEZ, not only in the EEZ off Alaska. The AFA amendments amended section 210(b) so that it now has section 210(b)(7)(B), which states, in part, ''[A]ny claim (including relating to catch history) associated with such vessel [a removed vessel] that could qualify any owner of such vessel for any permit to participate in any fishery within the exclusive economic zone of the United States shall be extinguished.'' It is simply that a rule in 50 CFR part 679 cannot extinguish claims in fisheries outside of the EEZ off Alaska.

With respect to claims relating to fishing history in the EEZ off Alaska, it is important to remember that the AFA amendments only require NMFS to extinguish all claims based on the catch history of a vessel in an inshore cooperative when the vessel is removed from the cooperative. If the owner of an AFA vessel replaces, rather than removes, an AFA catcher vessel with an inshore endorsement, NMFS will issue the replacement vessel all the fishing permits and licenses that were held by the replaced vessel so that the replacement vessel may operate in the same manner as the replaced vessel. Furthermore, the owner of an AFA vessel may select as a replacement vessel a vessel that already has an AFA permit.

If the owner of an AFA vessel chooses to remove, rather than replace, a catcher vessel in an inshore cooperative, NMFS must extinguish any claims to future permits in future catch share programs that are associated with the catch history of the removed vessel. NMFS bases this conclusion on the clear language of section 210(b)(7)(B) of the amended AFA: ''Except as provided in subparagraph (C), a vessel that is removed pursuant to this paragraph shall be permanently ineligible for a fishery endorsement, and any claim (including relating to catch history) associated with such vessel that could qualify any owner of such vessel for any permit to participate in any fishery within the exclusive economic zone of the United States shall be extinguished, unless such removed vessel is thereafter designated to replace a vessel to be removed pursuant to this paragraph.'' The exception in subparagraph (C) is for four named vessels. This comment does not refer to any of the four named vessels.

The extinguishment language in section 210(b)(7)(B) is strikingly broad: ''any claim'' associated with such vessel that could qualify ''any owner'' of such vessel for ''any period'' to participate in ''any fishery'' within the EEZ ''shall be extinguished.'' NMFS does not believe that the statute gives it authority to select which catch history of a removed vessel it should extinguish and which catch history it should not extinguish. If NMFS had such authority, the statute would address this issue and provide criteria, or at least guidance, as to which catch history of a removed vessel NMFS should extinguish and which catch history it should not.

NMFS does not, however, believe that the statute requires it to revoke any permits that it has already issued based on the catch history of a removed vessel. The AFA amendments direct NMFS to extinguish ''any claim (including relating to catch history) associated with such vessel that could qualify'' the owner of an AFA removed vessel for a permit. NMFS concludes that this refers to permits that NMFS might issue in the future based on a claim made in the future. If NMFS has already issued a permit, the owner of the vessel does not merely have a ''claim'' to a permit. The owner has a permit.

NMFS concludes that this reasoning applies with equal force to catch history of a removed vessel that NMFS has already assigned to an LLP license under the Rockfish Program at § 679.80. The holder of the LLP license may transfer that LLP license with any Rockfish QS assigned to that license within the restrictions at § 679.81(f). Thus, NMFS does not view issued Rockfish QS as a ''claim'' to QS but as QS that it has issued; that it has assigned to a particular LLP license; that may be used by different vessels if those vessels are named on the LLP license; and that may be transferred to another person when the LLP license is transferred to another person. However, upon removal of a catcher vessel, NMFS will extinguish all claims to new fishing permits and new fishing privileges that could be based on the catch history of the removed vessel.

NMFS notes that 16 AFA catcher vessels have an exemption from GOA

sideboards. The owners of these AFA catcher vessels will have to carefully consider replacing, rather than removing, their vessels. If the owner of an AFA catcher vessel replaces an AFA catcher vessel with an exemption from AFA sideboards in the GOA, NMFS will issue the replacement catcher vessel an AFA permit with an exemption from AFA sideboards in the GOA. If the owner of an AFA catcher vessel removes a vessel with an exemption from GOA sideboards, NMFS will extinguish the sideboard exemption.

Comment 6: AFA replacement vessels will likely have more capacity than the vessels they replace. AFA rebuilt vessels will likely have more capacity than the vessel before rebuilding. This may mean that AFA replacement and rebuilt vessels will catch more fish. For example, AFA replacement and rebuilt vessels may catch more yellowfin sole in the BSAI. NMFS should be vigilant that AFA vessels do not adversely impact other fisheries.

Response: AFA vessels—whether original, rebuilt, or replacement—are strictly limited in their activities in fisheries other than the Bering Sea pollock fishery. The Analysis of this action at § 1.9 describes the restrictions on AFA vessels in current regulations in both the BSAI and the GOA. NMFS will continue to enforce those restrictions. NMFS does not believe that this rule will make it more difficult to manage the yellowfin sole fishery or other fisheries in which AFA vessels participate.

With respect to yellowfin sole in the BSAI, the listed AFA catcher/processors and the AFA catcher vessels are limited to the amount of yellowfin sole these vessels harvested in the 1995–1997 period, as a percentage of the total allowable catch (TAC) for each year, subject to one exception (§ 679.64(a)(1)(iii), § 679.64(b)(3)(iii)). The exception was part of the Amendment 80 Program: NMFS removes AFA sideboard limits for yellowfin sole in the BSAI in years when the initial TAC level for that species assigned to the Amendment 80 sector and the BSAI trawl limited access sector is fairly high, namely 125,000 metric tons or greater. Final Rule, 72 FR 52668, 52726 (Sept. 14, 2007). By regulation, AFA vessels are not restricted to their historical catch of yellowfin sole in years when the aggregate initial TAC for yellowfin sole in the BSAI assigned to the Amendment 80 sector and the BSAI trawl limited access sector is 125,000 metric tons or greater (§ 679.64(a)(1)(v); § 679.64(b)(6)).

If the Council determines that stricter AFA sideboard limits on yellowfin sole or any other species are necessary, it would have to pursue that rulemaking. That would be a separate action.

Comment 7: If the Council proposes a GOA trawl catch share program in the future, the program should eliminate the maximum length overall restriction on the LLP licenses assigned to the vessels that receive fishing privileges under the new program.

Response: This is not a comment on the proposed rule. If the Council and NMFS develop a GOA trawl catch share program, the commenter should participate in the Council process and submit comments as part of the Secretarial rulemaking process.

Comment 8: AFA catcher/processors should not be able to participate in Amendment 80 fisheries.

Response: The Amendment 80 Program is a limited access program that authorizes vessels to harvest a specific number of units of certain groundfish species, but not pollock, in the BSAI. The permit regulations for Amendment 80 permits are primarily at 50 CFR 679.4(o).

Only one AFA catcher/processor, the *Ocean Peace,* may participate in an Amendment 80 sector fishery. The *Ocean Peace* is the only AFA catcher/processor that also has an Amendment 80 permit. In the future, the only AFA vessel that could participate in an Amendment 80 sector fishery would be the *Ocean Peace* or a replacement vessel for the *Ocean Peace.*

Comment 9: The IRFA summary in the proposed rule incorrectly states that all AFA catcher/processors are affiliated through membership in the Pollock Conservation Cooperative. This is inaccurate. The *Ocean Peace* is an AFA catcher/processor and is not a member of the Pollock Conservation Cooperative.

Response: The commenter is correct. The statement in the IRFA summary was in error. The *Ocean Peace* is an AFA catcher/processor and is not a member of the Pollock Conservation Cooperative. NMFS corrected the statement in the FRFA, which is contained in this rule.

Comment 10: The *Ocean Peace* is currently 219 feet. The *Ocean Peace* is named on an LLP license with area endorsements for the Bering Sea, the Aleutian Islands, and the Western Gulf. The vessel's LLP license has a current MLOA restriction of 219 feet. If the owner of the *Ocean Peace* rebuilds the *Ocean Peace* so that it is longer than 219 feet, or replaces the *Ocean Peace* with a vessel that is longer than 219 feet, does this rule affect the current regulation that NMFS assigns an MLOA of 295 feet to an LLP license on which an Amendment 80 replacement vessel is the named vessel? The *Ocean Peace* is the only vessel that is named on both an AFA permit and an Amendment 80 Quota Share permit.

Response: If the owner of the *Ocean Peace* rebuilds the *Ocean Peace* or acquires a replacement vessel for the *Ocean Peace,* NMFS will amend the LLP groundfish license that names the *Ocean Peace* and will assign an MLOA on that LLP license of 295 feet. The rebuilt *Ocean Peace* or the replacement vessel for the *Ocean Peace* would then be subject to an MLOA of 295 feet when it participates in any fishery in the GOA. NMFS would take these actions based on the current regulations for replacing an Amendment 80 vessel. See 50 CFR 679.4(o)(4); 50 CFR 679.4(k)(3)(i)(C); and 50 CFR 679.2 (definition of Maximum LOA, paragraph (2)(iv)).

The above regulations implemented Amendment 97 to the BSAI FMP. The subject of Amendment 97 was the replacement of Amendment 80 vessels (Final Rule, 77 FR 59852 (October 1, 2012)). Under Amendment 97, an Amendment 80 rebuilt vessel is treated as an Amendment 80 replacement vessel. All Amendment 80 replacement vessels must be classed and load lined or, if the vessel cannot be classed and load lined, the vessel must be enrolled in the Alternative Compliance and Safety Agreement Program of the U.S. Coast Guard. 77 FR at 59867 (NMFS Response to Comment 11).

The *Ocean Peace* also has an AFA permit to participate in the directed pollock fishery as a catcher/processor. Therefore, the *Ocean Peace* is subject to the AFA, as amended by the Coast Guard Act, Amendment 106, and this final rule. Under this rule, the owner of the *Ocean Peace* may rebuild or replace the *Ocean Peace* to improve safety or efficiency without limitation on the length of the rebuilt or replaced vessel, notwithstanding the MLOA restriction on the LLP license on which the *Ocean Peace* is named. Accordingly, under this rule at § 679.2 and § 679.4(k)(3)(i)(E), if the *Ocean Peace* is rebuilt or replaced, the rebuilt *Ocean Peace* or its replacement vessel will be exempt from the MLOA on the LLP license that names the *Ocean Peace* or its replacement vessel when the *Ocean Peace* or its replacement vessel is participating in the BSAI pursuant to that LLP license.

NMFS notes two ways that this rule could affect the ability of the *Ocean Peace* to participate in the GOA. First, under provisions added at § 679.4(l)(7)(iv), if the *Ocean Peace* becomes a replaced or removed AFA

vessel, it would be permanently ineligible to participate in any fishery in the EEZ off Alaska unless it reenters the fishery as an AFA replacement vessel. Second, under provisions added at § 679.4(l)(7)(ii)(B), if the *Ocean Peace* becomes a replacement vessel for any AFA catcher/processor or AFA catcher vessel, the *Ocean Peace* would operate subject to the restrictions and limitations of the vessel it replaced.

Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is consistent with the BSAI FMP, including Amendment 106, the Magnuson-Stevens Act, the AFA, and other applicable laws.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and the preamble to this final rule serve as the small entity compliance guide. This rule does not require any additional compliance from small entities that is not described in the preamble to the proposed rule. Copies of this final rule are available from NMFS at the following Web site: *http://alaskafisheries.noaa.gov*

Executive Order 12866

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

Regulatory Impact Review

The Council and NMFS conducted a Regulatory Impact Review (RIR) pursuant to Executive Order 12866. The RIR assessed the costs and benefits of Alternative 1, Alternative 2, and four options under Alternative 2. Alternative 1 was no change in the regulations in 50 CFR part 679. Alternative 2 was changing the regulations to conform to NMFS' interpretation of the AFA as amended by the Coast Guard Act. The four options under Alternative 2 would have imposed additional restrictions on AFA vessels when these vessels participate in the GOA, over and above restrictions in the AFA and current regulations. The Council and NMFS concluded that Alternative 2 is likely to result in net benefits to the nation. NMFS published the RIR in a combined document with the Initial Regulatory Flexibility Analysis (IRFA). This rule refers to the RIR/IRFA as the Analysis. A copy of the Analysis is available from NMFS (see **ADDRESSES**).

Final Regulatory Flexibility Analysis (FRFA)

The Regulatory Flexibility Act (RFA) contains the requirements for the FRFA in section 604(a)(1) through (6) of the RFA. The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;

2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

3. The response of the agency to any comments on the proposed rule by the Chief Counsel for Advocacy of the Small Business Administration;

4. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;

5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

NMFS prepared an IRFA that addressed the requirements described in section 603(b)(1) through (5) of the RFA. This FRFA incorporates the IRFA and the summary of the IRFA in the proposed rule (79 FR 34696, June 18, 2014). As noted, NMFS published the IRFA in a combined document with the RIR. The RIR/IRFA or Analysis is available on the NMFS Alaska Region Web site: *http://alaskafisheries.noaa.gov.*

A Succinct Statement of the Need for, and Objectives of, the Rule

This rule is needed to conform current regulations to the AFA amendments in the Coast Guard Act. The rule is also needed to allow the owners of AFA vessels to rebuild and replace their vessels to improve safety and efficiency, even if an AFA vessel has not sunk or been damaged beyond repair. The rule is also needed to allow the owners of AFA catcher vessels in inshore cooperatives to remove those vessels from the cooperative, when the owner is willing to withdraw the catcher vessel from all activity that requires a Federal fishery endorsement except to possibly use the removed vessel as an AFA replacement vessel in the future. The need for, and objectives of, this rule are further explained in the preamble to the proposed rule in the sections, ''The Need for Action'' and ''Proposed Action.'' (79 FR 34696, June 18, 2014).

Summary of Significant Issues Raised During Public Comment

The proposed rule was published on June 18, 2014 (79 FR 34696). The 45-day comment period on the proposed rule ended August 4, 2014. NMFS received one comment on the IRFA, namely that the IRFA summary in the proposed rule incorrectly stated that all AFA catcher/processors were members of the Pollock Conservation Cooperative. NMFS agreed this was incorrect because the Ocean Peace is an AFA catcher/processor and is not a member of the Pollock Conservation Cooperative. NMFS corrected this statement in the FRFA. NMFS describes this comment and its response in Comment 9. NMFS did not receive any other comment on the IRFA. NMFS did not receive any comments on the impacts of this action on small entities.

The Response to Comments From Small Business Administration

NMFS did not receive any comments on the proposed rule from the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Number and Description of Small Entities Regulated by the Final Rule

NMFS concludes that this rule does not directly regulate any small entities. The SBA establishes size criteria for small entities in all major industry sectors in the United States, including fish harvesting and fish processing businesses. On June 12, 2014, the SBA issued a final rule, effective July 14, 2014, that adjusted the annual receipts standard for small businesses based on inflation (79 FR 33647). The SBA rule

increased the annual receipts standard for entities in Finfish Fishing from $19.0 million to $20.5 million. AFA vessels receive their revenues predominately from finfish fishing. Therefore, the IRFA and the FRFA apply the finfish standard.

This action directly regulates the owners of vessels that are designated on AFA permits; these vessels are catcher vessels, catcher/processor vessels, and motherships. In 2013, 105 catcher vessels, 21 catcher/processors, and 3 motherships were designated on AFA permits (Analysis, Section 2.4). In assessing whether an entity is small, the RFA requires NMFS to consider affiliations between entities. All AFA catcher vessels are members of one of eight cooperatives delivering pollock to catcher/processors, to inshore processing plants, or to motherships (Analysis, Section 2.4).

NMFS concludes that none of the AFA vessels or AFA cooperatives are small entities. With respect to the seven AFA catcher vessels that are authorized to deliver to catcher/processors, these seven catcher vessels have formed the High Seas Catchers' Cooperative (HSCC). The HSCC leases the pollock allocation of its members to the Pollock Conservation Cooperative, a cooperative that comprises the nineteen listed AFA catcher/processors (Analysis, Section 1.9.2). The members of the Pollock Conservative Cooperative had estimated 2012 gross revenues from pollock alone in excess of $500 million (Analysis, Section 2.4). Thus, applying the revised, inflation-adjusted, standard of $20.5 million, all AFA entities in the catcher/processor sector—catcher vessels, catcher/processors, and the cooperatives of these vessels—are still large entities.

With respect to AFA catcher vessels that deliver to inshore processing plants and to motherships, all of these AFA catcher vessels are members of one of seven cooperatives. The IRFA stated: ''The seven cooperatives delivering to processing plants or motherships had gross revenues from pollock alone in excess of $19 million, and/or were affiliated with processing operations that themselves met the large entity threshold of 500 employees for entities of that type, and/or were affiliated with processors who did'' (Analysis, Section 2.4). The gross revenues from pollock for each of these cooperatives also exceeds $20.5 million dollars, and the affiliation relationships considered in the IRFA continue to exist. Therefore, all AFA catcher vessels that deliver to inshore plants or motherships, and the cooperatives of those vessels, are large entities.

With respect to AFA motherships, the IRFA states: ''Three motherships accept deliveries of pollock from catcher vessels. While these vessels are authorized to join the cooperative of catcher vessels making such deliveries, they have not recently chosen to do so. However, each of these motherships is believed to be a large entity, based on corporate affiliations with other large processing firms.'' (Analysis, Section 2.4). NMFS reaffirms this conclusion in this FRFA.

Thus, NMFS concludes that all of the entities directly regulated by this action are ''large'' entities for the purpose of the RFA.

Recordkeeping and Reporting Requirements

Since this action does not directly regulate any small entities, this action does not impose recordkeeping or reporting requirements on any small entities. This action imposes one additional reporting requirement on the owner of an AFA rebuilt vessel. If the owner of an AFA vessel rebuilds an AFA vessel, the owner shall submit the documentation for the rebuilt vessel to NMFS within 30 days of the issuance of the documentation. Apart from this requirement, the owners of AFA rebuilt vessels would be subject to the same recordkeeping and reporting requirements after rebuilding as before rebuilding.

Under this action, the owners of AFA replacement vessels are subject to the same recordkeeping and reporting requirements that applied to the replaced, or former, AFA vessel. Under this action, if a vessel is removed, the owners of the AFA vessels that are assigned the catch history of the removed vessel are subject to the same recordkeeping and reporting requirements after they are assigned the catch history of the removed vessel as before they were assigned the catch history of the removed vessel.

To implement this rule, NMFS has created an application form for the owner of an AFA vessel who wishes to take any of the actions allowed by this rule. The application form allows the owner of an AFA vessel to notify NMFS of rebuilding, to request to replace an AFA vessel, or to request removal of an AFA catcher vessel from an inshore cooperative.

Description of Significant Alternatives to the Final Action That Minimize Adverse Impacts on Small Entities

Section 604 of the RFA requires that NMFS describe any significant alternatives to the proposed action that would accomplish the stated objectives of applicable statutes and would minimize any significant adverse economic impacts on directly regulated small entities. Since this action does not directly regulate any small entities, this action has no adverse impacts on small entities and, therefore, there are no alternatives to this action that would minimize adverse impacts on small entities.

Collection-of-Information Requirements

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648–0393. Public reporting burden for the American Fisheries Act (AFA) Permit: Rebuilt, Replacement, or Removed Vessel Application is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSEES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 8, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

Title 15—Commerce and Foreign Trade

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, in the table in paragraph (b), under the entry ''50 CFR'':

■ a. Remove entries for ''679.4(b), (f), (h), and (i)''; ''679.4(d) and (e)''; ''679.4(g)''; ''679.4(k)''; ''679.4(l)(1) through (l)(7)''; ''679.4(m)(2)''; ''679.4(m)(4)''; ''679.4(n)''; ''679.4(o)''; ''679.7(a)(1)''; ''679.7(a)(3)''; ''679.7(a)(7)(vii) through (ix), 679.7(n)(1)(iv)''; ''679.7(a)(12), 679.7(k)(8)(i)''; ''679.7(a)(15)''; ''679.7(a)(18), 679.7(n)(3)''; ''679.7(a)(20)''; ''679.7(a)(21) and (22)''; ''679.7(b)(2)''; ''679.7(d)''; ''679.7(f)''; ''679.7(f)(8)(ii)''; ''679.7(g)''; ''679.7(i)''; ''679.7(k)''; ''679.7(l)''; ''679.7(n)''; ''679.7(n)(4)(ii)''; and ''679.7(o)''.

■ b. Add entries in alphanumeric order for ''679.4'' and ''679.7''.

The additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * * * *	
50 CFR:	
* * * * * * *	
679.4	–0206, –0272, –0334, –0393, –0513, –0545, –0565, and –0665.
* * * * * * *	
679.7	–0206, –0269, –0272, –0316, –0318, –0330, –0334, –0393, –0445, –0513, –0514, –0545, –0565.
* * * * * * *	

Title 50—Wildlife and Fisheries

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 4. In § 679.2,

■ a. Revise the definition of ''AFA mothership'';

■ b. Add definitions for ''AFA rebuilt vessel,'' ''AFA replacement vessel,'' and ''AFA vessel'' in alphabetical order; and

■ c. Add paragraph (2)(vi) to the definition of ''Maximum LOA (MLOA)''.

The revision and additions read as follows:

§ 679.2 Definitions.

* * * * *

AFA mothership means a mothership permitted to process BS pollock under § 679.4(l)(4).

* * * * *

AFA rebuilt vessel means an AFA vessel that was rebuilt after October 15, 2010.

AFA replacement vessel means a vessel that NMFS designated on an AFA permit pursuant to § 679.4(l)(7) after October 15, 2010.

AFA vessel means a vessel that is designated on an AFA catcher vessel permit, an AFA catcher/processor permit, or an AFA mothership permit, and is thereby authorized to participate in the Bering Sea directed pollock fishery.

* * * * *

Maximum LOA (MLOA) means:

(2) * * *

(vi) An AFA vessel is exempt from the MLOA on an LLP license with a Bering Sea area endorsement or an Aleutian Islands area endorsement when the vessel is used in the BSAI to harvest or process license limitation groundfish and the LLP license specifies an exemption from the MLOA restriction for the AFA vessel.

* * * * *

■ 5. In § 679.4,

■ a. Remove paragraphs (a)(1)(iii)(F), (l)(4) introductory text, and (l)(8)(iv);

■ b. Redesignate paragraphs (l)(2)(iii) as (l)(2)(iv) and (l)(8)(v) as (l)(8)(iv) ;

■ c. Revise paragraphs (k)(1)(i), (k)(3)(i)(A), (l)(1)(ii)(B), (l)(3)(i)(A)(*2*), (l)(3)(i)(B)(*2*), (l)(3)(i)(C)(*2*)(*ii*), (l)(4)(i), (l)(6)(ii)(C)(*3*), (l)(6)(ii)(D) introductory text, (l)(7), (l)(8)(i), (l)(8)(ii), (l)(8)(iii), and (o)(4)(i)(D); and

■ d. Add paragraphs (k)(3)(i)(E), (l)(2)(iii), (l)(3)(i)(A)(*3*), (l)(3)(i)(B)(*3*), (l)(3)(i)(C)(*3*), (l)(3)(ii)(E)(*3*), (1)(6)(ii)(D)(*3*), and (l)(6)(ii)(D)(*4*).

The revisions and additions read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(1) * * *

(i) In addition to the permit and licensing requirements of this part, and except as provided in paragraph (k)(2) of this section, each vessel within the GOA or the BSAI must have an LLP groundfish license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for license limitation groundfish. This groundfish license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish only in accordance with the specific area and species endorsements, the vessel and gear designations, the MLOA specified on the license, and any exemption from the MLOA specified on the license.

* * * * *

(3) * * *

(i) * * *

(A) *General.* A license may be used only on a vessel designated on the license, a vessel that complies with the vessel designation and gear designation specified on the license, and a vessel that has an LOA less than or equal to the MLOA specified on the license, unless the license specifies that the vessel is exempt from the MLOA on the license.

* * * * *

(E) *Exemption from MLOA on an LLP license with a Bering Sea area endorsement or an Aleutian Islands area endorsement for AFA rebuilt or AFA replacement vessels.* An AFA rebuilt vessel or an AFA replacement vessel may exceed the MLOA on an LLP groundfish license with a Bering Sea area endorsement or an Aleutian Islands area endorsement when the vessel is

conducting directed fishing for groundfish in the BSAI pursuant to that LLP groundfish license and when the exemption is specified on the LLP license.

* * * * *

(l) * * *

(1) * * *

(ii) * * *

(B) *Duration of final AFA permits.* (*1*) Except as provided in paragraphs (l)(1)(ii)(B)(*2*), (l)(1)(ii)(B)(*3*), (l)(5)(v)(B)(*3*), and (l)(6)(iii) of this section, AFA vessel and processor permits issued under this paragraph (l) are valid indefinitely unless the permit is suspended or revoked.

(*2*) An AFA vessel permit is revoked when the vessel designated on the permit is replaced or removed under paragraph (l)(7) of this section.

(*3*) In the event of a total loss or constructive loss of an AFA vessel,

(*i*) The AFA vessel permit that designates the lost AFA vessel will be valid from the date of the vessel loss up to 5 years from December 31 of the year in which the vessel was lost and will be suspended after that date, unless the AFA vessel permit for the lost vessel was revoked before that date because the lost vessel was replaced or removed under paragraph (l)(7) of this section. For example, if a vessel sinks on February 15, 2016, the AFA permit on the vessel will be valid until December 31, 2021, unless the owner of the vessel replaces or removes the vessel before December 31, 2021; after December 31, 2021, the AFA permit on the lost vessel will be suspended until the AFA vessel owner replaces or removes the lost vessel;

(*ii*) The owner of the lost AFA vessel must notify NMFS in writing of the vessel loss within 120 days of the date of the total loss or constructive loss of the vessel;

(*iii*) For purposes of paragraph (l)(1)(ii)(B)(*3*) of this section, an AFA lost vessel is a vessel that has been subject to a total loss or a constructive loss; a total loss means that the vessel is physically lost such as from sinking or a fire; a constructive loss means that the vessel suffered damage so that the cost of repairing the vessel exceeded the value of the vessel; the date of the total loss of a vessel is the date on which the physical loss occurred; the date of the constructive loss of a vessel is the date on which the damage to the vessel occurred.

* * * * *

(2) * * *

(iii) *AFA replacement vessels.* (A) NMFS will issue a listed AFA catcher/processor permit to the owner of a catcher/processor that is a replacement vessel for a vessel that was designated on a listed AFA catcher/processor permit.

(B) NMFS will issue an unlisted AFA catcher/processor permit to the owner of a catcher/processor that is a replacement vessel for a vessel that was designated on an unlisted AFA catcher/processor permit.

* * * * *

(3) * * *

(i) * * *

(A) * * *

(*2*) Is not listed in paragraph (l)(3)(i)(A)(*1*) of this section and is determined by the Regional Administrator to have delivered at least 250 mt and at least 75 percent of the pollock it harvested in the directed BSAI pollock fishery in 1997 to catcher/processors for processing by the offshore component; or

(*3*) Is an AFA replacement vessel for a vessel that was designated on an AFA catcher vessel permit with a catcher/processor endorsement.

(B) * * *

(*2*) Is not listed in paragraph (l)(3)(i)(B)(*1*) of this section and is determined by the Regional Administrator to have delivered at least 250 mt of pollock for processing by motherships in the offshore component of the BSAI directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998, and is not eligible for an endorsement to deliver pollock to catcher/processors under paragraph (l)(3)(i)(A) of this section; or

(*3*) Is an AFA replacement vessel for a vessel that was designated on an AFA catcher vessel permit with a mothership endorsement.

(C) * * *

(*2*) * * *

(*ii*) Is less than 60 ft (18.1 meters) LOA and is determined by the Regional Administrator to have delivered at least 40 mt of pollock harvested in the directed BSAI pollock fishery for processing by the inshore component in any one of the years 1996 or 1997, or between January 1, 1998, and September 1, 1998; or

(*3*) Is an AFA replacement vessel for a vessel that was designated on an AFA catcher vessel permit with an inshore endorsement.

(E) * * *

(*3*) *AFA replacement vessel for a catcher vessel that qualified for an exemption.* A catcher vessel that is a replacement vessel for a vessel that was designated on an AFA catcher vessel permit with an exemption from a groundfish sideboard directed fishing closure will receive an AFA catcher vessel permit with the same exemption as the replaced vessel.

(4) * * *

(i) NMFS will issue to an owner of a mothership an AFA mothership permit if the mothership:

(A) Is one of the following (as listed in paragraphs 208(d)(1) through (3) of the AFA):

EXCELLENCE (USCG documentation number 967502);

GOLDEN ALASKA (USCG documentation number 651041); and

OCEAN PHOENIX (USCG documentation number 296779); or

(B) Is an AFA replacement vessel for a vessel that was designated on an AFA mothership permit.

* * * * *

(6) * * *

(ii) * * *

(C) * * *

(*3*) Each catcher vessel in the cooperative is a qualified catcher vessel and is otherwise eligible to fish for groundfish in the BSAI, except that a lost vessel that retains an AFA permit pursuant to paragraph (l)(1)(ii)(B)(*3*) of this section need not be designated on a Federal Fisheries Permit or an LLP license; has an AFA catcher vessel permit with an inshore endorsement; and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI.

(D) *Qualified catcher vessels.* For the purpose of paragraph (l)(6)(ii)(C)(*3*) of this section, a catcher vessel is a qualified catcher vessel if the catcher vessel meets the permit and landing requirements in paragraphs (l)(6)(ii)(D)(*1*) and (l)(6)(ii)(D)(*2*) of this section; the catcher vessel is an AFA replacement catcher vessel that meets the requirements in paragraph (l)(6)(ii)(D)(*3*) of this section; or the catcher vessel is an AFA lost catcher vessel that meets the requirements in paragraph (l)(6)(ii)(D)(*4*) of this section.

* * * * *

(*3*) *AFA replacement catcher vessels.* The vessel is an AFA replacement vessel for a catcher vessel that met the permit and landing requirements in paragraphs (l)(6)(ii)(D)(*1*) and (l)(6)(ii)(D)(*2*) of this section;

(*4*) *AFA lost catcher vessels.* In the event of a total loss or constructive loss of an AFA catcher vessel with an inshore endorsement, the owner of the lost vessel has an AFA catcher vessel permit with an inshore endorsement for the lost vessel that is valid pursuant to paragraph (l)(1)(ii)(B)(*3*) of this section, and the inshore cooperative shows:

(*i*) The vessel was lost during a year when the vessel was designated on an

AFA inshore cooperative fishing permit issued to the cooperative submitting the application; or

(*ii*) The vessel was lost during a year when the vessel was not designated on any AFA inshore cooperative fishing permit and when the vessel delivered more pollock to the AFA inshore processor designated by the inshore cooperative under paragraph (l)(6)(ii)(B) of this section than to any other processor; or

(*iii*) The vessel was lost during a year when the vessel was not designated on any AFA inshore cooperative fishing permit and when the vessel had made no deliveries of pollock and the owner of the lost vessel has assigned the catch history of the lost vessel to the inshore cooperative that submits the application.

* * * * *

(7) *AFA rebuilt vessels, AFA replacement vessels, and removal of inshore AFA catcher vessels*—(i) *AFA rebuilt vessels.* (A) To improve vessel safety or to improve operational efficiency, including fuel efficiency, the owner of an AFA vessel may rebuild the vessel. If the owner of an AFA vessel rebuilds the vessel, the owner must notify NMFS within 30 days of the issuance of the vessel documentation for the AFA rebuilt vessel and must provide NMFS with a copy of the vessel documentation for the rebuilt vessel. If the owner of the AFA rebuilt vessel provides NMFS with information demonstrating that the AFA rebuilt vessel is documented with a fishery endorsement issued under 46 U.S.C. 12113, NMFS will acknowledge receipt of the notification and inform the owner that the AFA permit issued to the vessel before rebuilding is valid and can be used on the AFA rebuilt vessel.

(B) Except as provided in paragraph (l)(7)(i)(C) and paragraph (l)(7)(i)(D) of this section, the owner of an AFA rebuilt vessel will be subject to the same requirements that applied to the vessel before rebuilding and will be eligible to use the AFA rebuilt vessel in the same manner as the vessel before rebuilding.

(C) An AFA rebuilt vessel is exempt from the maximum length overall (MLOA) restriction on an LLP groundfish license with a Bering Sea area endorsement or an Aleutian Islands area endorsement when the AFA rebuilt vessel is conducting directed fishing for groundfish in the BSAI pursuant to that LLP groundfish license and the LLP groundfish license specifies the exemption.

(D) If an AFA rebuilt catcher vessel is equal to or greater than 125 ft (38.1 m) LOA, the AFA rebuilt catcher vessel will be subject to the catcher vessel exclusive fishing seasons for pollock in 50 CFR 679.23(i) and will not be exempt from 50 CFR 679.23(i) even if the vessel before rebuilding was less than 125 ft (38.1 m) LOA and was exempt from 50 CFR 679.23(i).

(ii) *AFA replacement vessels.* (A) To improve vessel safety or to improve operational efficiency, including fuel efficiency, the owner of an AFA vessel may replace the AFA vessel with a vessel that is documented with a fishery endorsement issued under 46 U.S.C. 12113.

(B) Upon approval of an application to replace an AFA vessel pursuant to paragraph (l)(7) of this section and except as provided in paragraph (l)(7)(ii)(C), paragraph (l)(7)(ii)(D), and paragraph (l)(7)(E) of this section, the owner of an AFA replacement vessel will be subject to the same requirements that applied to the replaced vessel and will be eligible to use the AFA replacement vessel in the same manner as the replaced vessel. If the AFA replacement vessel is not already designated on an AFA permit, the Regional Administrator will issue an AFA permit to the owner of the AFA replacement vessel. The AFA permit that designated the replaced, or former, AFA vessel will be revoked.

(C) An AFA replacement vessel is exempt from the maximum length overall (MLOA) restriction on an LLP groundfish license with a Bering Sea area endorsement or an Aleutian Islands area endorsement when the AFA replacement vessel is conducting directed fishing for groundfish in the BSAI pursuant to that LLP groundfish license and the LLP groundfish license specifies an exemption from the MLOA restriction for the AFA replacement vessel.

(D) If an AFA replacement catcher vessel is equal to or greater than 125 ft (38.1 m) LOA, the AFA replacement catcher vessel will be subject to the catcher vessel exclusive fishing seasons for pollock in 50 CFR 679.23(i) and will not be exempt from 50 CFR 679.23(i), even if the replaced vessel was less than 125 ft (38.1 m) LOA and was exempt from 50 CFR 679.23(i).

(E) An AFA replacement catcher vessel for an AFA catcher vessel will have the same sideboard exemptions, if any, as the replaced AFA catcher vessel, except that if the AFA replacement vessel was already designated on an AFA permit as exempt from sideboard limits, the AFA replacement vessel will maintain its exemption even if the replaced vessel was not exempt from sideboard limits.

(iii) *Removal of AFA catcher vessel from the directed pollock fishery.* (A) The owner of a catcher vessel that is designated on an AFA catcher vessel permit with an inshore endorsement may remove the catcher vessel from the directed pollock fishery, subject to the requirements in paragraphs (B), (C), and (D) of this paragraph (l)(7)(iii).

(B) The owner of the removed catcher vessel must direct NMFS to assign the non-CDQ inshore pollock catch history in the BSAI of the removed vessel to one or more catcher vessels in the inshore fishery cooperative to which the removed vessel belonged at the time of the application for removal.

(C) Except for the assignment of the pollock catch history of the removed catcher vessel in paragraph (l)(7)(iii)(B) of this section, all claims relating to the catch history of the removed catcher vessel in the Exclusive Economic Zone off Alaska, including any claims to an exemption from AFA sideboard limitations, will be permanently extinguished upon NMFS' approval of the application to remove the catcher vessel and the AFA permit that was held by the owner of the removed catcher vessel will be revoked.

(D) The catcher vessel or vessels that are assigned the catch history of the removed catcher vessel cannot be removed from the fishery cooperative to which the removed catcher vessel belonged for a period of one year from the date that NMFS assigned the catch history of the removed catcher vessel to that vessel or vessels.

(iv) *Replaced vessels and removed vessels.* An AFA vessel that is replaced or removed under paragraph (l)(7) of this section is permanently ineligible to receive any permit to participate in any fishery in the Exclusive Economic Zone off Alaska unless the replaced or removed vessel reenters the directed pollock fishery as a replacement vessel under paragraph (l)(7) of this section.

(v) *Application.* To notify NMFS that the owner of an AFA vessel has rebuilt the AFA vessel, the owner of the AFA vessel must submit a complete application. To replace an AFA vessel with another vessel, NMFS must receive a complete application from the owner of the vessel that is being replaced. To remove an AFA catcher vessel from the directed pollock fishery, NMFS must receive a complete application from the owner of the vessel that is to be removed. An application must contain the information specified on the application form, with all required fields accurately completed and all required documentation attached. The application must be submitted to NMFS using the methods described on the

application. The application referred to in this paragraph is ''American Fisheries Act (AFA) Permit: Rebuilt, Replacement, or Removed Vessel Application.''

(8) * * *

(i) *Initial evaluation.* The Regional Administrator will evaluate an application submitted in accord with paragraph (l) of this section. If the Regional Administrator determines that the applicant meets the requirements for NMFS to take the action requested on the application, NMFS will approve the application. If the Regional Administrator determines that the applicant has submitted claims based on inconsistent information or fails to submit the information specified in the application, the applicant will be provided a single 30-day evidentiary period to submit evidence to establish that the applicant meets the requirements for NMFS to take the requested action. The burden is on the applicant to establish that the applicant meets the criteria in the regulation for NMFS to take the action requested by the applicant.

(ii) *Additional information and evidence.* The Regional Administrator will evaluate the additional information or evidence submitted by the applicant within the 30-day evidentiary period. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proof, the application will be approved. However, if the Regional Administrator determines that the applicant did not meet the applicant's burden of proof, the applicant will be notified by an initial administrative determination (IAD) that the application is denied.

(iii) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to establish that the applicant meets the requirements for an AFA permit or for NMFS to approve the withdrawal of a catcher vessel, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of the applicant's 30-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. An applicant who receives an IAD may appeal under the appeals procedures set out at 15 CFR part 906.

* * * * *

(o) * * *

(4) * * *

(i) * * *

(D) The replacement vessel is not a vessel listed at section 208(e)(1) through (20) of the American Fisheries Act or permitted under paragraph (l)(2)(i) of this section; is not an AFA replacement vessel designated on a listed AFA catcher/processor permit under paragraph (l)(2)of this section; and is not an AFA catcher vessel permitted under paragraph (l)(3) of this section.

* * * * *

■ 6. In § 679.7, revise paragraphs (i)(6), (k)(1)(ii), (k)(1)(iii), (k)(1)(iv), (k)(1)(v), (k)(1)(vi)(A) heading, (k)(1)(vi)(B) heading, (k)(1)(vii)(A) heading, (k)(1)(vii)(B) heading, and (k)(2)(ii) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(i) * * *

(6) Use a vessel to fish for LLP groundfish or crab species, or allow a vessel to be used to fish for LLP groundfish or crab species, that has an LOA that exceeds the MLOA specified on the license that authorizes fishing for LLP groundfish or crab species, except if the person is using the vessel to fish for LLP groundfish in the Bering Sea subarea or the Aleutian Islands subarea pursuant to an LLP license that specifies an exemption from the MLOA on the LLP license.

* * * * *

(k) * * *

(1) * * *

(ii) *Fishing in the GOA.* Use a listed AFA catcher/processor or a catcher/processor designated on a listed AFA catcher/processor permit to harvest any species of fish in the GOA.

(iii) *Processing BSAI crab.* Use a listed AFA catcher/processor or a catcher/processor designated on a listed AFA catcher/processor permit to process any crab species harvested in the BSAI.

(iv) *Processing GOA groundfish.* (A) Use a listed AFA catcher/processor or a catcher/processor designated on a listed AFA catcher/processor permit to process any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

(B) Use a listed AFA catcher/processor or a catcher/processor designated on a listed AFA catcher/processor permit as a stationary floating processor for Pacific cod in the GOA and a catcher/processor in the GOA during the same year.

(v) *Directed fishing after a sideboard closure.* Use a listed AFA catcher/processor or a catcher/processor designated on a listed AFA catcher/processor permit to engage in directed fishing for a groundfish species or species group in the BSAI after the Regional Administrator has issued an AFA catcher/processor sideboard directed fishing closure for that groundfish species or species group under § 679.20(d)(1)(iv) or § 679.21(e)(3)(v).

(vi) * * *

(A) *Listed AFA catcher/processors and catcher/processors designated on listed AFA catcher/processor permits.* * * *

(B) *Unlisted AFA catcher/processors and catcher/processors designated on unlisted AFA catcher/processor permits.* * * *

(vii) * * *

(A) *Listed AFA catcher/processors and catcher/processors designated on listed AFA catcher/processor permits.* * * *

(B) *Unlisted AFA catcher/processors and catcher/processors designated on unlisted AFA catcher/processor permits.* * * *

* * * * *

(2) * * *

(ii) *Processing GOA groundfish.* Use an AFA mothership as a stationary floating processor for Pacific cod in the GOA and a mothership in the GOA during the same year.

* * * * *

■ 7. In § 679.51, revise paragraphs (a)(2)(vi)(B)(*1*) and (*3*) to read as follows:

§ 679.51 Observer requirements for vessels and plants.

(a) * * *

(2) * * *

(vi) * * *

(B) * * *

(*1*) *Listed AFA catcher/processors, catcher/processors designated on listed AFA catcher/processor permits, and AFA motherships.* The owner or operator of a listed AFA catcher/processor, a catcher/processor designated on a listed AFA catcher/processor permit, or an AFA mothership must have aboard at least two observers, at least one of whom must be certified as a lead level 2 observer, for each day that the vessel is used to catch, process, or receive groundfish. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

* * * * *

(*3*) *Unlisted AFA catcher/processors and catcher/processors designated on unlisted AFA catcher/processor permits.*

The owner or operator of an unlisted AFA catcher/processor or a catcher/processor designated on an unlisted AFA catcher/processor permit must have aboard at least two observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or receive pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When a listed AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving pollock harvested in the BSAI, the observer coverage requirements at paragraph (a)(2)(ii) of this section apply.

* * * * *

■ 8. In § 679.62, redesignate paragraphs (a)(2) and (3) as paragraphs (a)(3) and (4), respectively, and add new paragraph (a)(2) to read as follows:

§ 679.62 Inshore sector cooperative allocation program.

(a) * * *

(2) *Determination of individual vessel catch histories after approval of replacement of catcher vessel and approval of removal of catcher vessel from the AFA directed pollock fishery.* (i) If NMFS approves the application of an owner of a catcher vessel that is a member of an inshore vessel cooperative to replace a catcher vessel pursuant to § 679.4(l)(7), NMFS will assign the AFA inshore pollock catch history of the replaced vessel to the replacement vessel.

(ii) If NMFS approves the application of an owner of a catcher vessel that is a member of an inshore vessel cooperative to remove a catcher vessel from the AFA directed pollock fishery pursuant to § 679.4(l)(7), NMFS will assign the AFA inshore pollock catch history of the removed vessel to one or more vessels in the inshore vessel cooperative to which the removed vessel belonged as required by § 679.4(l)(7); NMFS will not assign the catch history for any non-pollock species of the removed vessel to any other vessel, and NMFS will permanently extinguish any exemptions from sideboards that were specified on the AFA permit of the removed vessel.

* * * * *

■ 9. In § 679.63, redesignate paragraph (c) as paragraph (d) and add new paragraph (c) to read as follows:

§ 679.63 Catch weighing requirements for vessels and processors.

* * * * *

(c) *What are the requirements for AFA replacement vessels?* The owner and operator of an AFA replacement vessel are subject to the catch weighing requirements and the observer sampling station requirements in paragraphs (a) and (b) of this section that applied to the owner and operator of the replaced vessel.

* * * * *

■ 10. In § 679.64:

■ a. Revise paragraph (a) heading and introductory text and paragraph (a)(1) heading; and

■ b. Add paragraphs (b)(2)(iii) and (iv).

The revisions and additions read as follows:

§ 679.64 Harvesting sideboard limits in other fisheries.

(a) *Harvesting sideboards for listed AFA catcher/processors and catcher/processors designated on listed AFA catcher/processor permits.* The Regional Administrator will restrict the ability of listed AFA catcher/processors and a catcher/processor designated on a listed AFA catcher/processor permit to engage in directed fishing for non-pollock groundfish species to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the BS subarea directed pollock fishery.

(1) *How will groundfish sideboard limits for AFA listed catcher/processors and catcher/processors designated on listed AFA catcher/processor permits be calculated?* * * *

* * * * *

(b) * * *

(2) * * *

(iii) An AFA rebuilt catcher vessel will have the same sideboard exemptions, if any, as the vessel before rebuilding, irrespective of the length of the AFA rebuilt catcher vessel.

(iv) An AFA replacement vessel for an AFA catcher vessel will have the same sideboard exemptions, if any, as the replaced AFA catcher vessel, irrespective of the length of the AFA replacement vessel, except that if the replacement vessel was already designated on an AFA permit as exempt from sideboard limits, the replacement vessel will maintain the exemption even if the replaced vessel was not exempt from sideboard limits.

* * * * *

§§ 679.4 and 679.51 [Amended]

■ 11. At each of the locations shown in the ''Location'' column, remove the phrase indicated in the ''Remove'' column and add in its place the phrase indicated in the ''Add'' column for the number of times indicated in the ''Frequency'' column.

Location	Remove	Add	Frequency
§ 679.4(a)(1)(iii)(A) and (a)(1)(iii)(C)	Indefinite	Indefinite unless permit is revoked after vessel is replaced or permit is suspended after vessel is lost.	1
§ 679.4(a)(1)(iii)(B)	Indefinite	Indefinite unless permit is revoked after vessel is replaced or removed, or permit is suspended after vessel is lost.	1
§ 679.51(f)(5)	(a)(2)(vi)(B)(*1*) and (*2*)	(a)(2)(vi)(B)(*1*) through (*3*)	1

[FR Doc. 2014–21829 Filed 9–11–14; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0745]

RIN 1625–AA00

Safety Zone; IncreDoubleman Triathlon, Lake Ontario, Sackets Harbor, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Sackets Harbor, Sackets Harbor, NY for a triathlon event. This temporary safety zone is necessary to protect swimmers from vessels operating in the area. This safety zone will restrict vessels from a portion of Lake Ontario during the swimming portion of the IncreDoubleman Triathlon event.

DATES: This temporary final rule is effective from 6:45 a.m. until 9:30 a.m. on September 13 and 14, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0745]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9573, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest.

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

B. Basis and Purpose

Between 6:45 a.m. until 9:30 a.m. on September 13 and 14, 2014, a triathlon/swimming races will be held offshore of Sackets Harbor, Sackets, NY. The Captain of the Port Buffalo has determined that large scale swimming event on a navigable waterway will pose a significant risk to participants and the boating public.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of participants, spectators, and vessels during the IncreDoubleman Triathlon event. This zone will be effective and enforced from 6:45 a.m. until 9:30 a.m. on September 13 and 14, 2014. The zone will encompass waters of Lake Ontario near Sackets Harbor, NY. Specifically, the safety zone will cover all waters of Lake Ontario landward of a line connecting the following points: 43°57′0.359″ N and 76°7′14.847″ W extending northeast to 43°57′12.704″ N and 76°7′2.644″ W and then extending east to 43°57′11.037″ N and 76°6′50.054″ W (NAD 83). The zone will include waters leading into, and away from, any marinas located in close proximity to the race area.

Entry into, transiting, or anchoring within the safety zone will be authorized on a case by case basis after contacting the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a maximum of 5.5 hours. Also, the safety zone is designed to minimize its impact on navigable waters. The safety zone will allow vessels to transit through with approval from the Coast Guard on-scene representative.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit a portion of Black River Bay in Sackets Harbor, NY on the mornings of September 13 and 14. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone will allow for the passage of vessels through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Section 165.T09–0745 is added to read as follows:

§ 165.T09–0745 Safety Zone; Incredoubleman Triathlon, Lake Ontario, Sackets Harbor, NY.

(a) *Location.* This safety zone will cover all waters of Lake Ontario landward of a line connecting the following points: 43°57′0.359″ N and 76°7′14.847″ W extending northeast to 43°57′12.704″ N and 76°7′2.644″ W and then extending east to 43°57′11.037″ N and 76°6′50.054″ W (NAD 83). This will include waters leading into, and away from, any marinas located in close proximity to the race area.

(b) *Effective and enforcement period.* This section is effective and will be enforced from 6:45 a.m. to 9:15 a.m. on September 13 and September 14, 2014.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall

contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 17, 2014.

B.W. Roche,

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

[FR Doc. 2014–21844 Filed 9–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0611]

RIN 1625–AA00

Safety Zone; Lucas Oil Thunder on the River; Thompson Bay, Lake Havasu City, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the navigable waters of Thompson Bay in Lake Havasu, AZ in support of the Lucas Oil Thunder on the River high speed boat race. This safety zone is established to help ensure the safety of participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Unauthorized persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or their designated representative.

DATES: This rule is effective from 7 a.m. to 7 p.m. on October 10, 2014 through October 12, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0611]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Giacomo Terrizzi, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *d11marineeventssandiego@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

A. Regulatory History and Information

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

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable to provide a full comment period due to lack of time before the high speed boat race is planned for this season. Completing the NPRM process and providing notice and a comment period is impracticable because it would unnecessarily delay this rule and the immediate safety measures it provides to the event participants, patrol vessels, spectator craft and other vessels transiting the event area. Additionally, the high speed boat race is advertised to the local community by and through the I–10 Race Promotions. Delaying the safety zone's effective date to complete the NPRM process would interfere with the advertised and planned boat race and would unnecessarily interfere with contractual obligations related to this event. The Coast Guard will provide advance notifications to users of the affected waterways of the safety zone via marine information broadcasts and local notice to mariners.

B. Basis and Purpose

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

I–10 Race Promotions is sponsoring the Lucas Oil Thunder on the River, which will involve 150 drag boats, 10 to 50 feet in length from across the United States and Canada. The safety zone will cover the majority of Thompson Bay. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, other vessels, and users of the waterway, specifically in minimizing vessel wakes by transiting vessels in the vicinity of the racing area. Unnecessary wakes can disrupt the racing boats and could cause injury or damage to the racing vessels.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced from 7 a.m. to 7 p.m. on October 10, 2014 through October 12, 2014. The effect of the temporary safety zone will be to restrict navigation in the vicinity of the boat race site until the conclusion of the races. The limits of the safety zone will include all the navigable waters of Thompson Bay encompassed by drawing a line from point to point along the following coordinates:

Northern Zone Line:
34°27′57.96″ N, 114°20′48.49″ W
34°27′57.71″ N, 114°20′49.75″ W
North West Zone Line:
34°27′07.99″ N, 114°21′09.93″ W
34°26′51.99″ N, 114°21′03.83″ W
South Zone Line:
34°27′07.99″ N, 114°21′09.93″ W
34°26′51.99″ N, 114°21′03.83″ W

The safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative, during the proposed times. The three day event will include official racing on Friday, Saturday, and Sunday. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and the event sponsor through Lake Havasu City has extensively advertised the marine event with the public.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size, location, and the limited duration of the safety zone. Additionally, to the maximum extent practicable, the event sponsor will assist with the movement of boaters desiring to transit the racing area during non-racing times throughout the three days. There is also an alternate route boaters can take to bypass the racing area to get from southern Lake Havasu to northern Lake Havasu.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the impacted portion of Lake Havasu from 7 a.m. to 7 p.m. on October 10, 2014 through October 12, 2014.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone would apply to the majority of Thompson Bay, boating traffic would still be allowed to pass through the zone at regular intervals, and with Captain of the Port approval during boat races. The event sponsor will to their maximum extent assist boaters wishing to transit the racing area during non-racing times throughout the three days.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–650 to read as follows:

§ 165.T11–650 Safety Zone; Lucas Oil Thunder on the River; Thompson Bay, Lake Havasu City, AZ.

(a) *Location.* The limits of the safety zone will include all the navigable waters of Thompson Bay encompassed by drawing a line from point to point along the following coordinates: From 34°27′57.96″ N, 114°20′48.49″ W to 34°27′57.71″ N, 114°20′49.75″ W; thence from 34°27′07.99″ N, 114°21′09.93″ W to 34°26′51.99″ N, 114°21′03.83″ W; thence from 34°27′07.99″ N, 114°21′09.93″ W to 34°26′51.99″ N, 114°21′03.83″ W; thence back to the point of origin.

(b) *Enforcement period.* This section will be enforced on October 10, 2014 through October 12, 2014 from 7 a.m. to 7 p.m.

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

(d) *Regulations.* (1) Under the general regulations in subpart C of this part, entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) All vessel operators shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

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

(4) The Coast Guard may be assisted by other federal, state, or local agencies in patrol and notification of the regulation.

Dated: August 18, 2014.

J.S. Spaner,

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

[FR Doc. 2014–21639 Filed 9–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

RIN 1625–AA00

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at specified times from September 3, 2014, to November 26, 2014. This action is necessary to protect the waterway, waterway users, and vessels from the hazards associated with the U.S. Army Corps of Engineers' installation of a new permanent fish barrier.

During the enforcement periods listed below, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Lake Michigan, or her designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced intermittently from 7 a.m. to 4 p.m. on Monday through Friday, from September 3, 2014 to September 30, 2014. In the event that the installation of the new permanent fish barrier cannot be completed in this timeframe, due to inclement weather or other unforeseen circumstances, this zone will be enforced from 7 a.m. to 4 p.m. on October 1, 2014 through November 26, 2014, excluding October 13, 2014, and November 11, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email MST1 John Ng, Waterways Department, Coast Guard Marine Safety Unit Chicago, telephone 630–986–2155, email address *john.h.ng@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone on all waters of the Chicago Sanitary and Ship Canal between Mile Marker 296.1 to Mile Marker 296.7. Enforcement will occur intermittently from 7 a.m. to 4 p.m. on Monday through Friday, from September 3, 2014, to September 30, 2014. In the event that the installation of the new permanent fish barrier cannot be completed in this timeframe, due to inclement weather or other unforeseen circumstances, this zone will be enforced from 7 a.m. to 4 p.m. on October 1, 2014, through November 26, 2014, excluding October 13, 2014, and November 11, 2014.

This schedule supersedes previously published schedules for enforcement of 33 CFR 165.930 due to the installation of a new permanent fish barrier (USCG 2011–0228–0024, 0025, 0026). The Captain of the Port suspends these previously issued schedules.

This enforcement action is necessary because the Captain of the Port, Lake Michigan, has determined that the U.S. Army Corps of Engineers' installation of a new permanent fish barrier poses risks to life and property. Because of these risks, it is necessary to control vessel

movement during the operations to prevent injury and property loss.

In accordance with the general regulations in § 165.23, entry into, transiting, mooring, laying up, or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Lake Michigan or her designated representative.

Vessels that wish to transit through the safety zone may request permission from the Captain of the Port, Lake Michigan. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port representative may be contacted via U.S. Coast Guard Sector Lake Michigan on VHF channel 16.

This document is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Captain of the Port, Lake Michigan, will also provide notice through other means, which may include Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port, Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: August 29, 2014.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2014–21640 Filed 9–11–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AP12

Special Home Adaptation Grants for Members of the Armed Forces and Veterans With Certain Vision Impairment

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing a final rule to amend its adjudication regulations regarding special home adaptation grants for members of the Armed Forces and veterans with certain vision impairment. This regulatory amendment is necessary to conform the regulations to changes mandated in the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012.

DATES: *Effective Date:* This final rule is effective September 12, 2014.

Applicability Date: The provisions of this final rule apply to all applications for benefits that are received by VA on or after October 1, 2012, the statutory effective date of the amendment, or that are pending before VA, the United States Court of Appeals for Veterans Claims, or the United States Court of Appeals for the Federal Circuit on or after October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Nancy A. Copeland, Consultant, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 203 of the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, Public Law 112–154, 126 Stat. 1165, 1177, amended 38 U.S.C. 2101(b) to expand the eligibility for members of the Armed Forces and veterans with certain vision impairments for special home adaptation grants. Prior to the amendment, eligible individuals with vision impairments were entitled to receive special home adaptation grants if the disability was rated as permanent and total and due to blindness in both eyes with 5/200 visual acuity or less. *See* 38 U.S.C. 2101(b)(1)(A) (2011). Section 203 redefines qualifying blindness as blindness in both eyes, having central visual acuity of 20/200 or less in the better eye with the use of a standard correcting lens. 126 Stat. at 1177. Section 203 also states that, for the purposes of 38 U.S.C. 2101(b)(2), an eye with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less. 126 Stat. at 1177.

VA finds that the language of the statute is clear on its face. Specifically, to qualify for this benefit, a claimant's disability must be due to blindness in both eyes having either (1) central visual acuity of 20/200 or less in the better eye with the use of a standard correcting lens or (2) an eye with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees. In section 203, Congress also eliminated the requirement that qualifying blindness be permanently and totally disabling by clearly distinguishing it from those conditions which still require a finding of permanent and total disability. 126 Stat. at 1177.

Accordingly, VA is amending 38 CFR 3.809a(b), the implementing regulation for 38 U.S.C. 2101(b), to reflect the previously discussed statutory amendments. For clarity, VA is also reorganizing and making technical corrections to § 3.809a(b). No substantive changes are intended from the reorganization and technical corrections.

Administrative Procedure Act

The Secretary of Veterans Affairs (Secretary) finds good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment. This amendment merely revises VA's regulations to comply with a statutory mandate that VA provide special home adaptation grants to members of the Armed Forces and veterans with certain vision impairments. The regulatory change reflects the change in statute that VA is adopting directly, without change, into VA's regulations and does not involve interpretation of the statutory provision. Also, the reorganization and technical corrections made by this rule do not alter any substantive rights or duties. Therefore, prior notice and opportunity for public comment is unnecessary. Additionally, for the reasons previously stated, the Secretary finds good cause to dispense with the delayed-effective-date requirement of 5 U.S.C. 553(d).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment,

public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site, at *http://www1.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

Regulatory Flexibility Act

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

Unfunded Mandates

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

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are Veterans Medical Care Benefits, 64.009; Specially Adapted Housing for Disabled Veterans, 64.106; and Veterans Compensation for Service-Connected Disability, 64.109.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on September 4, 2014, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Veterans.

Dated: September 9, 2014.

William F. Russo,

Deputy Director, Office of Regulation Policy & Management, Office of the General Counsel, U.S. Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A–Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.809a by revising paragraph (b) to read as follows:

§ 3.809a Special home adaptation grants under 38 U.S.C. 2101(b).

* * * * *

(b) A member of the Armed Forces serving on active duty must have a disability that was incurred or aggravated in line of duty in active military, naval, or air service and meets the requirements described in either paragraph (b)(1) or (b)(2) of this section. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability that meets the requirements described in either paragraph (b)(1) or (b)(2) of this section.

(1) VA has rated the disability as permanently and totally disabling and it:

(i) Includes the anatomical loss or loss of use of both hands;

(ii) Is due to deep partial thickness burns that have resulted in contracture(s) with limitation of motion of two or more extremities or of at least one extremity and the trunk;

(iii) Is due to full thickness or subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk; or

(iv) Is due to residuals of an inhalation injury (including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease).

(2) The disability is due to blindness in both eyes, having central visual acuity of 20/200 or less in the better eye with the use of a standard correcting lens. For the purposes of this paragraph, an eye with a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less. The disability discussed in this paragraph need not be rated as permanently and totally disabling.

* * * * *

[FR Doc. 2014–21791 Filed 9–11–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 43

RIN 2900–AP04

Updating Certain Citations in VA Medical Regulations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is making technical amendments to its medical regulations by updating the statutory authorities identified in certain sections where those statutes have been renumbered or where the authority citation is inaccurate for other technical, nonsubstantive reasons. VA is also amending outdated or incorrect cross-references to other Code of Federal Regulation sections.

DATES: This final rule is effective September 12, 2014.

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Director, Office of Regulatory Affairs (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 461–5657. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: To ensure the accuracy of VA's regulations, VA is updating the cross-references and authority citations in 38 CFR part 17.

Virtually every section in part 17 has been amended, often more than once, since part 17's initial publication on November 27, 1948, originally codified as part 25 in 38 CFR's first publication in 1938. 13 FR 7155. As regulations in part 17 were amended, other regulations that cross-referenced the amended regulations were not always updated. In addition, various statutes cited in our regulations have been renumbered since the initial publication of part 17. Finally, we have identified a few instances of erroneous references or citations to statutes and to regulations in part 17. Therefore, VA is amending the citations and authorities in its medical regulations to correct these oversights. VA is not making any substantive edits to the content of the sections amended by this rulemaking.

We are also amending the authority for part 43 of 38 CFR, as discussed below.

Section 17.30 Definitions

Paragraph (a) of § 17.30 defines medical services. Paragraph (a)(1) of § 17.30 cites 38 U.S.C. 1762 as the source of the statutory definition for preventive health services. The text of section 1762 was transferred to subsection (9) of 38 U.S.C. 1701 by the Veterans Health Care Act of 1992, Sec. 513, Public Law 102–585, 106 Stat. 4943 (1992). We are, therefore, updating the citation for preventive health services, in the definition of medical services under § 17.30(a)(1) to correctly cite section 1701(9).

Also, § 17.30(a)(3) reads that the entitlement information for transportation and incidental expenses is located at § 17.143. Section 17.143 was marked as reserved on June 30, 2008, and the content was moved to § 70.10. 73 FR 36798. We are amending § 17.30(a)(3) to provide the correct reference to § 70.10.

Paragraph (b) of § 17.30 defines ''domiciliary care'' as ''the furnishing of a home to a veteran, embracing the furnishing of shelter, food, clothing and other comforts of home, including necessary medical services. The term further includes travel and incidental expenses pursuant to § 17.143.'' Section 17.143 was marked as reserved on June 30, 2008. 73 FR 36798. The content of § 17.143 was moved to a new 38 CFR part 70 as § 70.10. We are replacing the reference to § 17.143 with the correct reference to § 70.10.

Section 17.43 Persons Entitled to Hospital or Domiciliary Care

Paragraph (c) of § 17.43 was originally added as paragraph (d) of § 17.46 on May 4, 1967. 32 FR 6841. The paragraph stated that hospital care may be provided ''pursuant to a sharing agreement entered into under § 17.210.'' Section 17.210, Sharing specialized medical resources, was established in the same regulatory action. On May 13, 1996, VA redesignated § 17.46 as § 17.43, and § 17.210 as § 17.240. 61 FR 21964. However, VA did not update § 17.43(c) to reflect the new citation for § 17.240. We are replacing the reference to § 17.210 in § 17.43 with the correct CFR reference, § 17.240.

Paragraph (d) of § 17.43 cross-references § 17.101 as the regulation containing information regarding charges for authorized services. However, on April 27, 1999, VA renumbered § 17.101 as § 17.102. 64 FR 22676. We are amending § 17.43(d) to correctly cross-reference § 17.102.

Section 17.45 Hospital Care for Research Purposes

Section 17.45 reads that ''[s]ubject to the provisions of § 17.62(g), any person who is a bona fide volunteer may be admitted to a Department of Veterans Affairs hospital when the treatment to be rendered is part of an approved Department of Veterans Affairs research project and there are insufficient veteran-patients suitable for the project.'' Section 17.62(g) of 38 CFR was renumbered as § 17.101(g) on May 13, 1996. 61 FR 21964. Section § 17.101(g) was then renumbered as § 17.102(g) on April 27, 1999. 64 FR 22676. VA did not update § 17.45 to reflect these changes. We are, therefore, updating § 17.45 to correctly cite § 17.102(g). We are also eliminating the words ''the provisions of'' from the phrase ''[s]ubject to the provisions of § 17.102(g)'' because these words do not add meaning to the sentence.

Section 17.47 Considerations Applicable in Determining Eligibility for Hospital, Nursing Home or Domiciliary Care

Paragraph (b)(1) of § 17.47 references § 3.800 for cases involving disability or death due to hospitalization under 38 U.S.C. 1151. At the time that § 17.47 was written, § 3.800 was the correct reference for cases involving disability or death due to hospitalization under 38 U.S.C. 1151. Section 3.800 applies to claims received before October 1, 1997. However, section 422(a) of Public Law 104–204 created the authority for claims received by VA on or after October 1, 1997, which VA codified as § 3.362. 63 FR 45004, Aug. 24, 1998; Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Sec. 422(a), Public Law 104–204, 110 Stat. 2926–2927 (1996). We are amending § 17.47(b)(1) to correctly reflect the cross-reference of § 3.362 and § 3.362(b), as appropriate.

Section 17.47(d)(3) incorrectly cites 38 U.S.C. 1111(a) as the authority for the maximum rates of pension. When § 17.48(d)(3), the precursor to § 17.47(d)(3), was promulgated, we inadvertently referenced 38 U.S.C. 311(a), the precursor of 38 U.S.C. 1111(a), as the authority for the maximum rates of pension. 51 FR 25065. When section 311 was renumbered as section 1111, we revised § 17.47(d)(3) to reflect the change. 57 FR 31015. However, the original citation should have been to 38 U.S.C. 3112, not 311(a). Section 3112 has since been renumbered as 38 U.S.C. 5312. Department of Veterans Affairs Health-Care Personnel Act of 1991, Sec. 402, Public Law 102–40, 105 Stat. 187 (1991). We are updating § 17.47(d)(3) to reflect the correct cross-reference of 38 U.S.C. 5312(a).

Prior to the enactment of the Veterans' Health Care Eligibility Reform Act of 1996 (Act of 1996), Sec. 101, Public Law 104–262, 110 Stat. 3177, 38 U.S.C. 1712 served as the statutory authority for VA to provide outpatient and ambulatory care. This authority was moved by the Act of 1996 from 38 U.S.C. 1712 to 38 U.S.C. 1710. Section 1712 currently addresses dental care, drugs and medicines for certain disabled veterans, and vaccines. Section 1710 addresses eligibility for hospital, nursing home and domiciliary care.

Paragraph (f) of § 17.47 cites 38 U.S.C. 1710(a)(2) as the authority for nursing home care and section 1712(a)(4) as the authority for outpatient care. The language of section 1710(a)(2) was revised and redesignated as 1710(a)(3) by the Act of 1996, and 38 U.S.C. 1712(a)(4) refers to a contract dental care reporting requirement. Therefore, we are amending paragraph (f) to correctly reference 38 U.S.C. 1710(a)(3) instead of 38 U.S.C. 1710(a)(2) and 1712(a)(4) and to eliminate the reference to 38 U.S.C. 1712(a)(4).

Paragraphs (g)(1) and (2) of § 17.47 cite paragraphs (e), (f), (h), (i), (j), and (k) of § 17.60 as the provisions that govern outpatient medical services. Section 17.60 was amended on May 15, 1990. 55 FR 20150. As amended, § 17.60 did not include paragraphs (h), (i), (j), or (k) and new paragraphs (e) and (f) did not contain the same information as the previous paragraphs (e) and (f). On May 13, 1996, § 17.60 was renumbered as § 17.93. 61 FR 21965. We are correcting §§ 17.47(g)(1) and (g)(2) to cross-reference § 17.93.

Section 17.48 Compensated Work Therapy/Transitional Residences Program

The authority citation at the end of § 17.48 is 38 U.S.C. 1772. However, section 5(a) of Public Law 107–95 renumbered 38 U.S.C. 1772 as 38 U.S.C. 2032. Homeless Veterans Comprehensive Assistance Act of 2001, Sec. 5(a), Public Law 107–95, 115 Stat. 903 (2001). We are updating the authority citation in § 17.48 to reflect this change.

Section 17.50 Use of Department of Defense, Public Health Service or Other Federal Hospitals With Beds Allocated to the Department of Veterans Affairs

Current § 17.50 cross-references §§ 17.46b, 17.47, 17.47(b)(2), and 17.47(c)(2). On July 10, 1986, VA amended § 17.47(c) by redesignating paragraph (c)(3) as (e)(1) and paragraphs (c)(1) and (2) became new paragraph (c). 51 FR 25064. On May 13, 1996, VA redesignated § 17.46b as § 17.44. 61 FR 21965. VA also removed paragraphs (a), (c), and (d) from § 17.47, and paragraphs (b) and (e) of § 17.47 became paragraphs (a) and (b) of § 17.46. VA amended § 17.50 to correctly cross-reference § 17.44 but did not update the cross-references to § 17.46 or § 17.47. We are correcting this oversight by amending the third sentence of § 17.50 to read, ''Care in a Federal facility not operated by VA, however, shall not be authorized for any military retiree whose sole basis for eligibility is under § 17.44, or, except in Alaska and Hawaii, for any retiree of the uniformed services suffering from a chronic disability whose entitlement is under § 17.44 or § 17.46(a)(2) regardless of whether he or she may have dual eligibility under other provisions of § 17.46.'' We also amend § 17.50 to use VA instead of Department of Veterans Affairs, which is the modern trend in our regulations.

Section 17.52 Hospital Care and Medical Services in Non-VA Facilities

Paragraph (a)(1)(v) of § 17.52 reads that non-VA care will be authorized ''[f]or any disability of a veteran participating in a rehabilitation program under 38 U.S.C. ch. 31 and when there is a need for hospital care or medical services for any of the reasons enumerated in § 17.48(j).'' Section 17.48 was redesignated as § 17.47 on May 13, 1996. 61 FR 21966. Paragraph (j) of § 17.47 was redesignated as § 17.47(i) on October 6, 1999. 64 FR 54218. However, § 17.52 has not been amended to reflect these changes. We are removing the reference to § 17.48(j) and replacing it with § 17.47(i).

Also, § 17.52(b)(2) references § 17.48(e), but we have eliminated paragraphs (e)(1) through (5) of § 17.48. See 61 FR 21966. The information contained in former § 17.48(e)(1) through (5) is found in 38 U.S.C. 1710. For this reason, we are removing the reference to § 17.48(e) and citing to 38 U.S.C. 1710 instead.

Section 17.57 Use of Community Nursing Homes

Paragraph (b) of § 17.57 reads, ''To the extent that resources are available and are not otherwise required to assure that VA can furnish needed care and treatment to veterans described in 38 U.S.C. 1710(a)(1), the Under Secretary for Health may furnish care under this paragraph to any veteran described in 38 U.S.C. 1710(a)(2) if the veteran agrees to pay the United States an amount as determined in 38 U.S.C. 1710(f).'' Among other things, the Act of 1996 amended 38 U.S.C. 1710 by revising the language of subsection (a)(1) and redesignating it as (a)(1) and (2). The Act of 1996 also revised subsection (a)(2) and redesignated it as subsection (a)(3). Accordingly, we are amending paragraph (b) of § 17.57 by replacing 38 U.S.C. 1710(a)(1) with 38 U.S.C. 1710(a)(1) and (2), and by replacing 38 U.S.C. 1710(a)(2) with 38 U.S.C. 1710(a)(3).

Section 17.90 Medical Care for Veterans Receiving Vocational Training Under 38 U.S.C. Chapter 15

Paragraph (a) of § 17.90 cross-references § 17.47(j) for the definition of ''participating in a rehabilitation program under 38 U.S.C. chapter 31.'' On October 6, 1999, VA redesignated paragraph (j) of § 17.47 as paragraph (i). 64 FR 54218. However, § 17.90(a) was not updated to reflect this amendment. We are amending § 17.90(a) to correctly cross-reference § 17.47(i).

Section 17.93 Eligibility for Outpatient Services

The authority citation after § 17.93(a) is 38 U.S.C. 1712. However, as previously stated in this rulemaking, the statute that covers outpatient services is now 1710. We are adding 1710 to the authority citation after § 17.93(a).

Current paragraph (b) of § 17.93 defines the term ''shall furnish'' as used in this section and 38 U.S.C. 1712(a)(1) and (2). Because § 17.93 regulates eligibility for outpatient services, sections 1712(a)(1) and (2) are no longer the correct authority for this discussion. We are amending paragraph (b) by replacing 38 U.S.C. 1712(a)(1) and (2) with the correct reference, which is 38 U.S.C. 1710(a)(1) and (2).

Paragraph (c)(1) of § 17.93 cross-references § 17.47(j) for the definition of ''participating in a rehabilitation program under 38 U.S.C. chapter 31.'' On October 6, 1999, VA redesignated paragraph (j) of § 17.47 as paragraph (i). 64 FR 54218. However, § 17.93(c)(1) was not updated to reflect this amendment. We are amending § 17.93(c)(1) to correctly cross-reference § 17.47(i).

The authority citation at the end of current § 17.93 is 38 U.S.C. 1717. Section 17.60, the precursor to § 17.93, was published on May, 15, 1990, and it included a paragraph (f), which addressed home health services and for which the authority was section 617, the precursor to section 1717. 55 FR 20151. However, paragraph (f) was deleted on May 13, 1996, making 38 U.S.C. 1717 an incorrect authority for § 17.93. 61 FR 21965. We are deleting section 1717 from the authority citation of § 17.93 and adding in its place 1710 and 1712.

Section 17.95 Outpatient Medical Services for Department of Veterans Affairs Employees and Others in Emergencies

Current § 17.95 cross-references § 17.101 for charges for care or services in emergencies. As previously stated in this rulemaking, § 17.101 was renumbered to § 17.102 on April 27, 1997. 64 FR 22676. Therefore, we are amending § 17.95 to correctly cross-reference § 17.102.

Section 17.95 cites 38 U.S.C. 1711 as the authority for outpatient medical services for VA employees and others in emergencies. Section 1711 is the precursor to section 611, which was added as the authority on December 30, 1982, when VA published a new paragraph (b) to § 17.60b, the precursor to § 17.95. 47 FR 58249. However, on May 13, 1996, VA redesignated § 17.60b as new § 17.95 and removed the paragraph (b) that was added on December 30, 1982. 61 FR 21965. Because paragraph (b) was removed, 38 U.S.C. 1711 is no longer a correct authority citation for § 17.95. We are amending the authority citation in § 17.95 to cite the correct authority, 38 U.S.C. 1784.

Section 17.96 Medication Prescribed by Non-VA Physicians

The authority for § 17.96 is currently 38 U.S.C. 1706, 1710, 17.12(d). However, 17.12(d) is not a section within 38 U.S.C. We are amending the authority for § 17.96 to correctly read, 38 U.S.C. 1706, 1710, 1712(d).

Section 17.98 Mental Health Services

Paragraph (a) of § 17.98 reads that ''[f]ollowing the death of a veteran,

bereavement counseling involving services defined in 38 U.S.C. 1701(6)(B), may be furnished to persons who were receiving mental health services in connection with treatment of the veteran under 38 U.S.C. 1710, 1712, 1712A, 1713, or 1717, or 38 CFR 17.84''. Section 1701(6)(B) of the United States Code was renumbered as section 1783. Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, Sec. 208, Public Law 107–135, 115 Stat. 2461 (2002). We are amending § 17.98(a) by replacing 1701(6)(B) with 1783. For this same reason, we are removing 1701(6)(B) as the authority citation for the section and adding 1783 in its place.

The Act of 1996 removed from 38 U.S.C. 1712 the provisions that govern outpatient care. Therefore, it is no longer accurate to state that treatment under section 1712 is covered for purposes of § 17.98. We are removing section 1712 from paragraph (a) of § 17.98, leaving the correct reference to section 1710. Also, 38 U.S.C. 1713 was renumbered as section 1781. Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, Sec. 208(c), Public Law 107–135, 115 Stat. 2461 (2002). We are amending § 17.98(a) by replacing section 1713 with section 1781. Section 17.84 was marked as reserved on September 9, 1998. 63 FR 48102. Because it contains no substantive content, we are removing the reference to § 17.84 from § 17.98.

Section 17.106 VA Collection Rules; Third-Party Payers

Paragraph (c)(3) of § 17.106 reads, ''The remedies authorized for collection of indebtedness due the United States under 31 U.S.C. 3701, et seq., 4 CFR parts 101 through 104, 28 CFR part 11, 31 CFR part 900, and 38 CFR part 1, are available to effect collections under this section.'' On November 22, 2000, 4 CFR parts 101 through 104 were removed. 65 FR 70405. We are amending § 17.106(c)(3) by removing the cross-reference to ''4 CFR parts 101 through 104.'' We are also amending the cross-reference to 31 CFR part 900 to more accurately reflect the pertinent parts within 31 CFR, which are parts 900 through 904.

Section 17.107 VA Response to Disruptive Behavior of Patients

Section 17.107 of 38 CFR contains a Note at the end of the section that reads, ''Note to § 17.106''. On June 24, 2011, 76 FR 37204, VA renumbered § 17.106 as § 17.107, but the Note was not amended to reflect this change. We are amending the Note at the end of § 17.107 to reflect the correct section number.

Section 17.142 Authority To Approve Sharing Agreements, Contracts for Scarce Medical Specialist Services and Contracts for Other Medical Services

Paragraph (a) of § 17.142 authorizes the Under Secretary for Health to enter into ''[s]haring agreements authorized under the provisions of 38 U.S.C. 8153 and § 17.210 and which may be negotiated pursuant to the provisions of 41 CFR 8–3.204(c)''. Section 17.210 was renumbered as § 17.240 on May 13, 1996. 61 FR 21966. Also, title 41 CFR was reorganized in 1983, eliminating paragraph 8–3.204(c). Title 41 was subsequently amended and § 8–3.204 was removed. We believe that it is sufficient to cite 38 U.S.C. 8153 as the authority for VA contracts. We are amending § 17.142(a) to read, ''Sharing agreements authorized under 38 U.S.C. 8153 and § 17.240''.

Paragraph (c) of § 17.142 reads, ''Such approval, however, will not be necessary in the case of any purchase order or individual authorization for which authority has been delegated in § 17.99. All such contracts and agreements will be negotiated pursuant to 41 CFR chapters 1 and 8.'' The approval referred to in this paragraph is VA's approval of contracts authorized under 38 U.S.C. 513, which allows VA to enter into contracts or agreements with private or public agencies or persons. Although this paragraph (c) states that section 513 is the authority for medical and ancillary services, VA has determined that section 513 may not be used to procure services constituting day-to-day medical care operations. VA's authority for such services is now 38 U.S.C. 8153. We are amending paragraph (c) to cite to 38 U.S.C. 8153. Section 104 of Public Law 104–262 allowed for some categories of veterans to be eligible for VA hospital and outpatient care even if not enrolled in the VA healthcare system. Veterans' Health Care Eligibility Reform Act of 1996, Sec. 104, Public Law 104–262, 110 Stat. 3177 (1996). Section 17.37 was promulgated in response to the enactment of the public law, and § 17.99 was removed because it became redundant. 64 FR 54218. However, § 17.37 does not authorize VA to enter into contracts with non-VA facilities. The delegation of authority for purchase orders or individual contracts is found in 48 CFR 801.670–3. Therefore, we are amending § 17.142(c) to correctly cite to 48 CFR 801.670–3. Also, because chapters 1 and 8 of 41 CFR no longer exist, we are amending the last sentence of § 17.142(c) to reflect the current contracting procedures for health-care resources, which are 48 CFR chapters 1 and 8. We are also removing 38 U.S.C. 513 as the authority for § 17.142 because VA's authority for contract medical and ancillary services is now 38 U.S.C. 8153, which is already cited as an authority to this section.

Section 17.150 Prosthetic and Similar Appliances

Paragraph (a) of § 17.150 references 38 U.S.C. 1712 as the authority for providing appliances or repairs as part of outpatient care. As previously stated in this rulemaking, the correct statutory authority for outpatient care is section 1710. We are removing the reference to section 1712 from paragraph (a) and replacing it with a reference to section 1710.

Paragraph (b)(4) of § 17.150 cross-references § 17.48(f) for the authorization of the treatment of nonservice-connected disabilities. Section 17.48(f) was renumbered several times as follows: As § 17.48(i) on July 10, 1986, 51 FR 25061; as § 17.47(i) on May 13, 1996, 61 FR 21966; and, finally, as § 17.47(h) on October 6, 1999, 64 FR 54218. We are amending § 17.150(b)(4) to correctly cross-reference § 17.47(h).

Section 17.152 Devices To Assist in Overcoming the Handicap of Deafness

The authority citation for § 17.152 is 38 U.S.C. 3902. Section 3902 is the authority for assistance for providing automobiles and adaptive equipment for automobiles. The correct authority citation for § 17.152 is 38 U.S.C. 1717(c), Home health services; invalid lifts and other devices. We are amending § 17.152 to correct the authority citation to 38 U.S.C. 1717(c).

Section 17.160 Authorization of Dental Examinations

Paragraph (h) of § 17.160 reads, ''Persons defined in § 17.60(d).'' On May 13, 1996, § 17.60 was renumbered as § 17.93. 61 FR 21965. We are amending § 17.160(h) to correctly cross-reference § 17.93.

Section 17.161 Authorization of Outpatient Dental Treatment

The authority citation after paragraph (e) of § 17.161 cites 38 U.S.C. 1712(b)(1)(F). On October 9, 1996, 38 U.S.C. 1712(b)(1)(F) was redesignated as 1712(a)(1)(F). Veterans' Health Care Eligibility Reform Act of 1996, Sec. 101(c)(1), Public Law 104–262, 110 Stat. 3177 (1996). We are amending the authority citation after § 17.161(e) to correctly read, 38 U.S.C. 1712(a)(1)(F).

Section 17.163 Posthospital Outpatient Dental Treatment

The authority citation for § 17.163 is 38 U.S.C. 1712(b)(5). On January 31, 1980, the authority citation for § 17.123b, the precursor to § 17.163, was 38 U.S.C. 612(b)(5). 45 FR 6939. However, section 103(a) of Public Law 97–72 amended 38 U.S.C. 612 by redesignating section 612(b)(5) as 612(b)(1)(E), which later became 38 U.S.C. 1712(b)(1)(E), on August 6, 1991. Veterans' Health Care, Training, and Small Business Loan Act of 1981, Sec. 103(a), Public Law 97–72, 95 Stat. 1047; Department of Veterans Affairs Codification Act, Sec. 5, Public Law 102–83, 105 Stat. 378 (1991). Also, on October 9, 1996, 38 U.S.C. 1712(b)(1)(E) was redesignated as 1712(a)(1)(E). Veterans' Health Care Eligibility Reform Act of 1996, Sec. 101(c)(1), Public Law 104–262, 110 Stat. 3177 (1996). Although the authority citation was amended to 38 U.S.C. 1712, the correct citation is 1712(a)(1)(E) and not 1712(b)(5). Accordingly, we are amending the authority citation of § 17.163 to correctly refer to 38 U.S.C. 1712(a)(1)(E).

Section 17.180 Delegation of Authority

Paragraph (b) of § 17.180 cross-references 38 U.S.C. chapter 75 for the statutes that address the Veterans Canteen Service. On May 7, 1991, section 402(a) of Public Law 102–40 redesignated chapter 75 of 38 U.S.C. as chapter 78. Department of Veterans Affairs Health-Care Personnel Act of 1991, Sec. 402(a), Public Law 102–40, 105 Stat. 187 (1991). We are amending § 17.180(b) to correctly cite 38 U.S.C. chapter 78.

Section 17.197 Amount of Aid Payable

Current § 17.197 cross-references 38 U.S.C. 1741(a)(1) as the authority for the per diem rates for domiciliary care, and 38 U.S.C. 1741(a)(3) as the authority for the per diem rates for hospital care. On May 20, 1988, section 134 of Public Law 100–322 amended subsection (a) of 38 U.S.C. 641, the precursor of 38 U.S.C. 1741, by removing paragraphs (1) through (3) and adding new paragraphs (1) and (2). Veterans Benefits and Services Act of 1988, Sec. 134, Public 100–322, 102 Stat. 487 (1988). Also, on October 9, 1996, section 342 of Public Law 104–262 redesignated subsections (a)(1) and (2) of 1741 as subsections (a)(1)(A) and (B). Veterans' Health Care Eligibility Reform Act of 1996, Sec. 342, Public Law 104–262, 110 Stat. 3177 (1996). We are amending § 17.197 to state the correct authority for the per diem rates for domiciliary care as 38 U.S.C. 1741(a)(1)(A), and the authority for the per diem rates for hospital care as 38 U.S.C. 1741(a)(1)(B).

Section 17.230 Contingency Backup to the Department of Defense

The second sentence of § 17.230(b) cites 38 U.S.C. 1712(f) and (g) as the authority for veterans receiving outpatient care. However, 38 U.S.C. 1712(g) was repealed by section 101(e)(2)(B) of Public Law 100–322. Veterans Benefits and Services Act of 1998, Sec. 101(e)(2)(B), Public Law 100–322, 102 Stat. 487 (1988). Also, section 1712(f) was transferred to 38 U.S.C. 1710(g) by section 101 of Public Law 104–262. Veterans' Health Care Eligibility Reform Act of 1996, Sec. 101, Public Law 104–262, 110 Stat. 3177 (1996). We are, therefore, amending paragraph (b) of § 17.230 by removing 38 U.S.C. 1712(g) and replacing 38 U.S.C. 1712(f) with 38 U.S.C. 1710(g).

Section 17.240 Sharing Healthcare Resources

On October 9, 1996, section 301(c)(1)(A) of Public Law 104–262 amended 38 U.S.C. 8153 by substituting ''health-care resources'' for ''certain specialized medical resources;'' ''other health-care resources'' for ''other medical resources;'' and ''of health-care resources between Department health-care facilities and any health-care provider, or other entity or individual'' for a listing of the different health care facilities. Veterans' Health Care Eligibility Reform Act of 1996, Sec. 301(c)(1)(A), Public Law 104–262, 110 Stat. 3177 (1996). However, VA did not update § 17.240 to conform with the amendments to the public law. We are now amending the title in § 17.240 from ''Sharing specialized medical resources'' to ''Sharing health-care resources.'' We are also removing the term ''specialized medical'' where it appears in § 17.240 and adding, in its place, ''health-care.'' Lastly, we are removing ''with other hospitals, including State or local, public or private hospitals or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions, or medical schools or clinics in a medical community'' from the introductory paragraph in § 17.240 and adding, in its place ''between Department health-care facilities and any health-care provider, or other entity or individual.''

Section 17.255 Applications for Grants for Programs Which Include Construction Projects

Paragraph (c) of § 17.255 cross-references 40 U.S.C. 276a through 276a–5, The Davis-Bacon Act, as the statute that deals with local wage rates for laborers and mechanics engaged in construction activities. The Davis-Bacon Act, which was originally codified as 40 U.S.C. 276a to 276a–5, was repealed and reenacted as sections 3141–3144, 3146, and 3147, codifying Title 40, United States Code-Public Buildings, Property, and Works, Sec. 1, 6(b), Public Law 107–217, 116 Stat. 1062 (2002). We are amending § 17.255 to cross-reference 40 U.S.C. 3141–3144, 3146, and 3147. We are also eliminating the reference to the term ''the Davis-Bacon Act'' at the end of paragraph (c).

Section 17.277 Third-Party Liability/ Medical Care Cost Recovery

The current authority citation for § 17.277 includes 28 U.S.C. 2651. However, section 2651 is not a section under title 28 U.S.C. The correct reference should be to section 2651 of title 42. We are amending the authority citation for § 17.277 to correctly cite 42 U.S.C. 2651.

Section 17.509 Authorized Disclosure: Non-Department of Veterans Affairs Requests

The last sentence of paragraph (a) of § 17.509 reads, ''The procedures outlined in 38 CFR 1.500 through 1.584 will be followed where applicable.'' On June 7, 1996, VA removed, and marked as reserved, §§ 1.558, 1.559, 1.578, 1.581, 1.583, and 1.584. 61 FR 29023. These sections were removed because they were duplicative of language from the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a. We are amending § 17.509 to correctly cross-reference the procedures outlined in 38 U.S.C. 5701, 5 U.S.C. 552 and 552a, and 38 CFR 1.500 through 1.582.

Section 17.608 Deferment of Obligated Service

The authority citation for § 17.608(a) is 38 U.S.C. 7616(a)(A)(i). However, section 7616 does not contain a subsection (a)(A)(i). On July 7, 1989, VA cited section 4316(a)(A)(i) as the authority for § 17.608(a). 54 FR 28675. However, the citation should have been 4316(b)(3)(A)(i). Veterans Benefits and Services Act of 1988, Sec. 216, Public Law 100–322, 102 Stat. 487 (1988). That section was later renumbered as 38 U.S.C. 7616. Department of Veterans Affairs Health-Care Personnel Act of 1991, Sec. 402, Public Law 102–40, 105 Stat. 187 (1991). Therefore, we are correcting the authority citation after paragraph (a) of § 17.608 to correctly cite 38 U.S.C. 7616(b)(3)(A)(i).

Section 17.609 Pay During Period of Obligated Service

The first sentence of § 17.609 cross-references 38 U.S.C. 7404(b)(1). Subsection (b)(1) of section 7404 was removed on December 3, 2004. Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004, Sec. 3(a), Public Law 108–445, 118 Stat. 2636 (2004). We are revising the first sentence of § 17.609 to correctly cross-reference 38 U.S.C. 7404(b).

The authority citation for § 17.609 cites Public Law 96–330, section 202 and 38 U.S.C. 7431–7440. We are removing the reference to Public Law 96–330, section 202 because it is no longer the authorizing statute for the Health Professional Scholarship Program. See Caregivers and Veterans Omnibus Health Services Act of 2010, Sec. 603, Public Law 111–163, 124 Stat. 1173 (2010). We are also eliminating 38 U.S.C. 7434 through 7440 from the authority citation. These sections were removed on December 3, 2004, by the Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004. Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004, Sec. 3(b), Public Law 108–445, 118 Stat. 2636 (2004). We are amending the authority citation to correctly cite 38 U.S.C. 7431 through 7433.

Section 17.900 Definitions

Section 17.900 defines the term ''child for purposes of spina bifida'' to mean ''the same as individual as defined at § 3.814(c)(2) or § 3.815(c)(2) of this title and for purposes of covered birth defects means the same as individual as defined at § 3.815(c)(2) of this title.'' On January 25, 2011, VA redesignated paragraph § 3.814(c)(2) as paragraph (c)(3). 76 FR 4249. We are amending the definition of the term ''child'' in § 17.900 to correctly cross-reference the definition of ''individual'' in § 3.814(c)(3).

Part 43 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

The current authority for 38 CFR part 43 is ''38 U.S.C. 501, 1712.'' The Act of 1996 removed the statutory authority for outpatient care from 38 U.S.C. 1712. Outpatient care is now covered under 38 U.S.C. 1710. However, the statutory authority for part 43 is not 38 U.S.C. 1710. Part 43 of 38 CFR outlines the procedures for grants and cooperative agreements to state and local governments, not eligibility for VA care. VA's authority to prescribe regulations to carry out the laws administered by VA is 38 U.S.C. 501. We rely on this general authority for all of part 43 and, where applicable, state specific sections that have an additional authority. We are, therefore, amending the authority citation for part 43 to read ''38 U.S.C. 501, and as noted in specific sections.''

Administrative Procedure Act

This final rule will not amend the substantive content of the regulations cited. We are merely providing technical revisions to update outdated statutory references and statutory authorities. We are also updating outdated CFR references. Accordingly, notice-and-comment procedures are not necessary for this rulemaking, and we find good cause to make these changes effective immediately. Consequently, this rule is exempt from the notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA's implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary rules or procedures are authorized. All existing or subsequent VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

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

Executive Orders 12866 and 13563

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

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/*, by following the link for ''VA Regulations Published.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind

Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on September 2, 2014, for publication.

List of Subjects

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Veterans.

38 CFR Part 43

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 9, 2014.

William F. Russo,

Deputy Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, we amend 38 CFR parts 17 and 43 as follows:

PART 17—MEDICAL

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

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

§ 17.30 [Amended]

■ 2. Amend § 17.30 by:
■ a. In paragraph (a)(1), removing ''38 U.S.C. 1762,'' and adding in its place ''38 U.S.C. 1701(9),''.
■ b. In paragraph (a)(3), removing ''§ 17.143.'' and adding in its place ''§ 70.10 of this chapter.''.
■ c. In paragraph (b), removing ''§ 17.143.'' and adding in its place ''§ 70.10 of this chapter.''.

§ 17.43 [Amended]

■ 3. Amend § 17.43 by:
■ a. In paragraph (c), removing ''§ 17.210,'' and adding in its place ''§ 17.240,''.
■ b. In paragraph (d), removing ''§ 17.101.'' and adding in its place ''§ 17.102.''

§ 17.45 [Amended]

■ 4. Amend § 17.45 by removing ''the provisions of § 17.62(g),'' and adding in its place ''§ 17.102(g),''.

§ 17.47 [Amended]

■ 5. Amend § 17.47 by:
■ a. In paragraph (b)(1), removing all references to ''§ 3.800'' and adding in each place ''§ 3.362'', and removing all references to ''§ 3.800(a)(2)'' and adding in each place ''§ 3.362(b)''.
■ b. In paragraph (d)(3), removing ''38 U.S.C. 1111(a)'' and adding in its place ''38 U.S.C. 5312(a)''.
■ c. In paragraph (f), removing ''hospital or nursing home care under 38 U.S.C. 1710(a)(2) or outpatient care under 38 U.S.C. 1712(a)(4)'' and adding in its place ''hospital, nursing home, or outpatient care under 38 U.S.C. 1710(a)(3)''.
■ d. In paragraph (g)(1) introductory text, removing ''paragraphs (e), (f), (i), (j), and/or (k) of § 17.60'' and adding in its place ''§ 17.93''.
■ e. In paragraph (g)(2) introductory text, removing ''paragraph (e), (f), (h), (i), (j), or (k) of § 17.60,'' and adding in its place ''§ 17.93,''.

■ 6. Amend § 17.48 by revising the authority citation to read as follows:

§ 17.48 Compensated Work Therapy/Transitional Residences program.

* * * * *

(Authority: 38 U.S.C. 2032)

■ 7. Revise § 17.50 to read as follows:

§ 17.50 Use of Department of Defense, Public Health Service or other Federal hospitals with beds allocated to the Department of Veterans Affairs.

Hospital facilities operated by the Department of Defense or the Public Health Service (or any other agency of the United States Government) may be used for the care of VA patients pursuant to agreements between VA and the department or agency operating the facility. When such an agreement has been entered into and a bed allocation for VA patients has been provided for in a specific hospital covered by the agreement, care may be authorized within the bed allocation for any veteran eligible under 38 U.S.C. 1710 or § 17.44. Care in a Federal facility not operated by VA, however, shall not be authorized for any military retiree whose sole basis for eligibility is under § 17.44, or, except in Alaska and Hawaii, for any retiree of the uniformed services suffering from a chronic disability whose entitlement is under § 17.44 or § 17.46(a)(2) regardless of whether he or she may have dual eligibility under other provisions of § 17.46.

§ 17.52 [Amended]

■ 8. Amend § 17.52 by:
■ a. In paragraph (a)(1)(v), removing ''§ 17.48(j).'' and adding in its place ''§ 17.47(i).''.
■ b. In paragraph (b)(2), removing ''in § 17.48(e).'' and adding in its place ''under 38 U.S.C. 1710.''.

§ 17.57 [Amended]

■ 9. Amend § 17.57(b) by:
■ a. Before the comma, and immediately after ''1710(a)(1)'' adding ''and (a)(2)''.
■ b. Removing ''38 U.S.C. 1710(a)(2)'' and adding in its place ''38 U.S.C. 1710(a)(3)''.

§ 17.90 [Amended]

■ 10. Amend § 17.90(a) by removing ''§ 17.47(j).'' and adding in its place ''§ 17.47(i).''.
■ 11. Amend § 17.93 by:
■ a. Revising the authority citation for paragraph (a).
■ b. In paragraph (b), removing ''38 U.S.C. 1712(a)(1)'' and adding in its place ''38 U.S.C. 1710(a)(1)''.
■ c. In paragraph (c)(1), removing ''§ 17.47(j).'' and adding in its place ''§ 17.47(i).''
■ d. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 17.93 Eligibility for outpatient services.

(a) * * *

(Authority: 38 U.S.C. 1710, 1712)

* * * * *

(Authority: 38 U.S.C. 1710, 1712)

■ 12. Amend § 17.95 by:
■ a. Removing ''§ 17.101'' and adding in its place ''§ 17.102''.
■ b. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 17.95 Outpatient medical services for Department of Veterans Affairs employees and others in emergencies.

* * * * *

(Authority: 38 U.S.C. 1784)

■ 13. Amend § 17.96 by revising the authority citation at the end of the section to read:

§ 17.96 Medication prescribed by non-VA physicians.

* * * * *

(Authority: 38 U.S.C. 1706, 1710, 1712(d))

■ 14. Amend § 17.98 by:
■ a. In paragraph (a), removing ''38 U.S.C. 1701(6)(B)'' and adding in its place ''38 U.S.C. 1783'', and
■ b. In paragraph (a), removing ''38 U.S.C. 1710, 1712, 1712A, 1713, or 1717, or 38 CFR 17.84 of this part,'' and adding in its place ''38 U.S.C. 1710, 1712A, 1717, or 1781,''.
■ c. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 17.98 Mental health services.

* * * * *

(Authority: 38 U.S.C. 1783)

§ 17.106 [Amended]

■ 15. Amend § 17.106(c)(3) by:
■ a. Removing ''4 CFR parts 101 through 104,'', and
■ b. Removing ''31 CFR part 900'' and adding in its place ''31 CFR parts 900 through 904''.

§ 17.107 [Amended]

■ 16. Amend the Note at the end of § 17.107 by removing ''§ 17.106'' and adding in its place ''§ 17.107''.

§ 17.142 [Amended]

■ 17. Amend § 17.142 by:
■ a. In paragraph (a), removing ''the provisions of 38 U.S.C. 8153 and § 17.210 and which may be negotiated pursuant to the provisions of 41 CFR 8–3.204(c);'' and adding, in its place ''38 U.S.C. 8153 and § 17.240;''.
■ b. Revising paragraph (c).
■ c. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 17.142 Authority to approve sharing agreements, contracts for scarce medical specialist services and contracts for other medical services.

* * * * *

(c) When a sharing agreement or contract for scarce medical specialist services is not warranted, contracts authorized under the provisions of 38 U.S.C. 8153 for medical and ancillary services. The authority under this section generally will be exercised by approval of proposed contracts or agreements negotiated at the health care facility level. Such approval, however, will not be necessary in the case of any purchase order or individual authorization for which authority has been delegated in 48 CFR 801.670–3. All such contracts and agreements will be negotiated pursuant to 48 CFR chapters 1 and 8.

(Authority: 38 U.S.C. 512, 7409, 8153)

§ 17.150 [Amended]

■ 18. Amend § 17.150 by:
■ a. In paragraph (a), removing ''38 U.S.C. 1712'' and adding in its place ''38 U.S.C. 1710''.
■ b. In paragraph (b)(4), removing ''§ 17.48(f),'' and adding in its place ''§ 17.47(h),''.
■ 19. Amend § 17.152 by revising the authority citation at the end of the section to read as follows:

§ 17.152 Devices to assist in overcoming the handicap of deafness.

* * * * *

(Authority: 38 U.S.C. 1717(c))

§ 17.160 [Amended]

■ 20. Amend § 17.160(h) by removing ''§ 17.60(d).'' and adding in its place ''§ 17.93.''
■ 21. Amend § 17.161 by revising the authority citation for paragraph (e) to read as follows:

§ 17.161 Authorization of outpatient dental treatment.

* * * * *

(e) * * *

(Authority: Pub. L. 100–322; Pub. L. 108–170; 38 U.S.C. 1712(a)(1)(F))

* * * * *

■ 22. Amend § 17.163 by revising the authority citation at the end of the section to read as follows:

§ 17.163 Posthospital outpatient dental treatment.

* * * * *

(Authority: 38 U.S.C. 1712(a)(1)(E))

§ 17.180 [Amended]

■ 23. Amend § 17.180(b) by removing ''38 U.S.C. ch. 75,'' and adding in its place ''38 U.S.C. ch. 78,''.

§ 17.197 [Amended]

■ 24. Amend § 17.197 by:
■ a. Removing ''title 38 U.S.C., section 1741(a)(1)'' and adding in its place ''38 U.S.C. 1741(a)(1)(A)''.
■ b. Removing ''section 1741(a)(3)'' and adding in its place ''sec. 1741(a)(1)(B)''.

§ 17.230 [Amended]

■ 25. Amend § 17.230(b) by removing ''38 U.S.C. 1712(f) and (g)'' and adding in its place ''38 U.S.C. 1710(g)''.
■ 26. Amend § 17.240 by:
■ a. Revising the section heading.
■ b. In the introductory text, removing ''with other hospitals, including State or local, public or private hospitals or other medical installations having hospital facilities or organ banks, blood banks, or similar institutions, or medical schools or clinics in a medical community'' and adding, in its place, ''between Department health-care facilities and any health-care provider, or other entity or individual''.
■ c. Removing all references to ''specialized medical'' and adding in each place ''health-care''.

The revision reads as follows:

§ 17.240 Sharing health-care resources.

* * * * *

§ 17.255 [Amended]

■ 27. Amend § 17.255(c) by removing ''40 U.S.C. 276a–276a–5 (The Davis-Bacon Act).'' and adding in its place ''40 U.S.C. 3141–3144, 3146, and 3147.''.
■ 28. Amend § 17.277 by revising the authority citation at the end of the section to read as follows:

§ 17.277 Third-party liability/medical care cost recovery.

* * * * *

(Authority: 42 U.S.C. 2651; 38 U.S.C. 501, 1781)

§ 17.509 [Amended]

■ 29. Amend § 17.509(a) by removing ''38 CFR 1.500 through 1.584'' and adding in its place ''38 U.S.C. 5701, 5 U.S.C. 552 and 552a, and 38 CFR 1.500 through 1.582''.
■ 30. Amend § 17.608 by revising the authority citation for paragraph (a) to read as follows:

§ 17.608 Deferment of obligated service.

(a) * * *

(Authority: 38 U.S.C. 7616(b)(3)(A)(i))

* * * * *

■ 31. Amend § 17.609 by:
■ a. Removing ''section 7404(b)(1) of title 38 U.S.C.'' and adding in its place ''38 U.S.C. 7404(b)''.
■ b. Revising the authority citation at the end of the section to read as follows:

§ 17.609 Pay during period of obligated service.

* * * * *

(Authority: 38 U.S.C. 7431–7433)

§ 17.900 [Amended]

■ 32. Amend § 17.900 in the definition of ''Child'' by removing ''§ 3.814(c)(2)'' and adding in its place ''§ 3.814(c)(3)''.

PART 43—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

■ 33. Revise the authority citation for part 43 to read as follows:

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

[FR Doc. 2014–21790 Filed 9–11–14; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2013–0527; FRL–9916–49–Region 2]

Approval and Promulgation of Implementation Plans; New York; Infrastructure SIP for the 2010 Nitrogen Dioxide Primary Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving certain elements of New York's State Implementation Plan (SIP) revisions submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2010 National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO_2). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP.

DATES: This rule is effective on October 14, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2013–0527. 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, e.g., 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, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. The Air Programs Branch dockets are available from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Air Programs Branch telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249, or by email at *gardella.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What is the background information and purpose of this action?

Under CAA section 110(a)(1), states are required to submit plans called state implementation plans (SIPs) that provide for the implementation, maintenance and enforcement of each NAAQS and are referred to as infrastructure SIPs. 42 U.S.C. 7410(a)(1). On February 9, 2010, EPA promulgated a new 1-hour primary NAAQS for NO_2 (2010 NO_2 NAAQS) while retaining the annual primary NAAQS for NO_2 (75 FR 6474). Under CAA section 110(a)(2), the 14 elements required to be addressed in infrastructure SIPs are as follows: (1) Emission limits and other control measures; (2) ambient air quality monitoring/data system; (3) program for enforcement of control measures; (4) interstate transport; (5) adequate resources; (6) stationary source monitoring system; (7) emergency power; (8) future SIP revisions; (9) consultation with government officials; (10) public notification; (11) prevention of significant deterioration (PSD) and visibility protection; (12) air quality modeling/data; (13) permitting fees; and (14) consultation/participation by affected local entities.

EPA is acting on New York's SIP submittal dated May 8, 2013, as supplemented on May 23, 2013, which addresses the section 110 infrastructure requirements for the 2010 NO_2 NAAQS. Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to CAA section 191. (See also CAA section 172 for general nonattainment plan requirements). These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address the nonattainment area plan requirements related to section 110(a)(2)(C) or 110(a)(2)(I).

II. What comments did EPA receive in response to its proposal?

EPA received one anonymous adverse comment on the May 2, 2014 (79 FR 25066) rulemaking proposing to approve New York's SIP submittal. EPA has evaluated the comment as discussed below and has determined that New York's SIP revision addressing the 2010 NO_2 NAAQS is consistent with the CAA and therefore EPA is approving New York's SIP revision into the New York SIP. Following is the comment and EPA's response.

Comment: The commenter states that EPA cannot approve New York's interstate transport provision addressed in its 2010 NO_2 NAAQS infrastructure SIP revision because, according to the commenter, the Supreme Court decision in *EME Homer City* v. *EPA* ''requires SIPs to 'contain adequate provisions prohibiting any source or emissions activity within the State from emitting ANY pollutants in amounts which will contribute to nonattainment in, or interfere with maintenance by, any other State with respect to any other State with respect to ANY [NAAQS].' (emphasis on 'any').'' The commenter also quotes from EPA's May 2, 2014 rulemaking which proposes to approve New York's 2010 NO_2 infrastructure SIP revision and states that NO_X is a precursor for ozone and $PM_{2.5}$ and that NO_2 is a component of NO_X. The commenter states that because of the aforementioned Supreme Court decision, EPA must evaluate New York's 2010 NO_2 infrastructure SIP revision submission, as it relates to interstate transport, with respect to all NAAQS and not just for the 2010 NO_2 NAAQS.

Response: This comment addresses the requirements of CAA section 110(a)(2)(D)(i)(I). This provision, often referred to as the good neighbor provision, requires each State Implementation Plan to prohibit ''any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will . . . contribute significantly to nonattainment in or interfere with maintenance by, any other state with respect to any . . . primary or secondary [NAAQS].'' 42 U.S.C. 7410(a)(2)(D)(i). The recent Supreme Court decision in *Environmental Protection Agency* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014), addressed the requirements of this provision and reversed the prior DC Circuit decision vacating EPA's Cross-State Air Pollution Rule. The commenter quotes from the section of the Supreme Court decision that

discusses the historical development (from 1963 onward) of EPA's interstate transport policy (also referred to as the 'Good Neighbor' Provision). The quoted language essentially tracks the statutory text of CAA Section 110(a)(2)(D)(i)(I), which describes specific elements that must be included in State Implementation Plans to address pollution that is transported across state lines. As the Supreme Court decision in *EME Homer City* confirmed, pursuant to CAA section 110(a)(1), state plans to address these requirements must be submitted to the Administrator within three years of the promulgation or revision of a NAAQS. *EME Homer City,* 134 S. Ct. at 1600.

EPA interprets the comment as stating that the 110(a)(2)(D)(i)(I) provisions of New York's 2010 NO_2 infrastructure SIP should address, in addition to emissions that significantly contribute to nonattainment or interfere with maintenance of the NO_2 NAAQS, any emissions that significantly contribute to nonattainment or interfere with maintenance of all other NAAQS, particularly the NAAQS for ozone and $PM_{2.5}$ since NO_2 is a component of NO_X and NO_X is a precursor for ozone and $PM_{2.5}$. EPA disagrees. Because it is the promulgation or revision of a NAAQS that triggers the requirement to submit a SIP addressing the requirements of 110(a)(2)(D)(i)(I), EPA interprets the CAA as requiring each such SIP to address the 110(a)(2)(D)(i)(I) requirements only with respect to the specific NAAQS at issue. In other words, each 110(a)(2)(D)(i)(I) SIP submission need only address the specific NAAQS which had been promulgated or revised by EPA thereby triggering the SIP submission requirement. Because New York submitted this SIP to address the applicable requirements of 110(a)(2) with respect to the 2010 NO_2 NAAQS, it need only demonstrate that the SIP is adequate to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the 2010 NO_2 NAAQS in other states. Any emissions that have such impacts with respect to other NAAQS must be addressed as appropriate in the 110(a)(2)(D)(i)(I) SIP submissions for those other NAAQS. In its May 8, 2013 action, EPA proposed to conclude that New York's May 8, 2013 infrastructure SIP revision, as supplemented on May 23, 2013, addressed all applicable CAA infrastructure SIP requirements, including the requirements of 110(a)(2)(D)(i)(I), with respect to the NO_2 NAAQS. 79 FR 25066, 25071–25073. The commenter has offered no data or evidence to suggest that the submission does not do so.

III. What is the impact of the June 2014 Supreme Court Green House Gas decision on New York's infrastructure SIP for the 2010 NO_2 NAAQS?

With respect to Elements C and J, EPA interprets the Clean Air Act to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) may also be satisfied by demonstrating the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. New York has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

On June 23, 2014, the United States Supreme Court issued a decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427. The Supreme Court said that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT). In order to act consistently with its understanding of the Court's decision pending further judicial action to effectuate the decision, the EPA is not continuing to apply EPA regulations that would require that SIPs include permitting requirements that the Supreme Court found impermissible. Specifically, EPA is not applying the requirement that a state's SIP-approved PSD program require that sources obtain PSD permits when GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification (*e.g.* 40 CFR 51.166(b)(48)(v)). EPA anticipates a need to revise federal PSD rules in light of the Supreme Court opinion. In addition, EPA anticipates that many states will revise their existing SIP-approved PSD programs in light of the Supreme Court's decision. The timing and content of subsequent EPA actions with respect to the EPA regulations and state PSD program approvals are expected to be informed by additional legal process before the United States District Court for the District of Columbia Circuit. At this juncture, EPA is not expecting states to have revised their PSD programs for purposes of infrastructure SIP submissions and is only evaluating such submissions to assure that the state's program correctly addresses GHGs consistent with the Supreme Court's decision.

At present, EPA has determined the New York SIP is sufficient to satisfy Elements C, D(i)(II), and J with respect to GHGs because the PSD permitting program previously-approved by EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved New York PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy Elements C, D(i)(II), and J. The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect EPA's proposed approval of New York's infrastructure SIP as to the requirements of Elements C, D(i)(II), and J.

IV. What action is EPA taking?

EPA is approving New York's submittal as fully meeting the applicable infrastructure requirements for the 2010 primary NO_2 NAAQS for the following section 110(a)(2) elements: (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

As stated above, this action does not address the nonattainment area plan requirements related to sections 110(a)(2)(C) or 110(a)(2)(I). EPA will act on them when they become due and are submitted.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet

the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 2, 2014.

Judith A. Enck,

Regional Administrator, Region 2.

Part 52, 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 HH—New York

■ 2. Section 52.1670 is amended by adding a new entry to the end of the table in paragraph (e) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or non-attainment area	New York submittal date	EPA approval date	Explanation
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2010 Primary Nitrogen Dioxide NAAQS.	Statewide ..	5/08/13, and supplemented on 5/23/13.	9/12/14 [Insert **Federal Register** citation].	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

[FR Doc. 2014–21682 Filed 9–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0712; FRL–9915–47]

Sulfentrazone; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of sulfentrazone in or on apple. The Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 12, 2014. Objections and requests for hearings must be received on or before November 12, 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–2013–0712, 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), West William Jefferson Clinton 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; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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–2013–0712 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 November 12, 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–2013–0712, 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 December 30, 2013 (78 FR 79359) (FRL–9903–69), 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 3E8202) by IR–4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.498 be amended by establishing tolerances for residues of the herbicide sulfentrazone, (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide), and its metabolite HMS (*N*-(2,4-dichloro-5-(4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl)phenyl)methanesulfonamide, calculated as the stoichiometric equivalent of sulfentrazone, in or on apple at 0.15 parts per million (ppm). That document referenced a summary of the petition prepared on behalf of IR–4 by FMC Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has determined that it is appropriate to establish the tolerance in or on apple for the combined residues of the free and conjugated forms of the herbicide sulfentrazone, and its metabolites HMS (*N*-(2,4-dichloro-5-(4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl)phenyl)methanesulfonamide) and DMS (*N*-(2,4-dichloro-5-(4-(difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl)phenyl)methanesulfonamide, calculated as the stoichiometric equivalent of sulfentrazone. The reason for this decision is discussed 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 sulfentrazone including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with sulfentrazone 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.

Subchronic and chronic toxicity studies in rats, mice, and dogs identified the hematopoietic system as the target of sulfentrazone. Sulfentrazone inhibits the enzyme protoporphyrinogen oxidase (PPO) in target plants, and the results of subchronic and chronic toxicity studies in mammalian systems are consistent with PPO inhibition. Disruption of heme biosynthesis was indicated by signs of anemia, and decreases in hematocrit (Hct), hemoglobin (HGB), and mean corpuscular volume (MCV) in mice, rats, and dogs at comparable dose levels from short- through long-term exposures without a significant increase in severity.

Sulfentrazone caused developmental effects when administered via the oral (rats and rabbits) and dermal (rat only) routes of exposure. Developmental effects in rats and rabbits consisted of reductions in the number of implantations in rats, and increases in early resorptions and reduction in live fetuses per litter in rats and rabbits. Surviving rat fetuses exhibited reduced/delayed skeletal ossifications, and decreased fetal body weights. Developmental effects in rats were seen in the absence of maternal toxicity. In contrast with the rat studies, developmental effects in rabbits were observed at a maternally toxic dose, where clinical signs of toxicity included hematuria (red blood cells in urine), abortions, and decreased body-weight gains. In the 2-generation reproductive toxicity study in rats, developmental effects included an increased duration of gestation, reduced prenatal viability (fetal and litter), reduced litter size, and an increased number of stillborn pups. Pup body-weight deficits, along with reduced pup and litter postnatal survival, were also observed. All of the offspring effects were reported in the presence of mild maternal toxicity (decreased body weight and body-weight gain, particularly in F_1 females). No systemic toxicity was seen via the dermal route up to the limit dose in a 28-day dermal toxicity study in adult non-pregnant rabbits. In a dermal developmental study in rats, there was an increased quantitative fetal susceptibility. While no maternal effects were observed up to the highest dose tested, fetal effects were observed at this dose, and consisted of decreased body weights, increased incidences of fetal variations, hypoplastic or wavy ribs, incompletely ossified lumbar vertebral arches, incompletely ossified ischia or pubis, and a reduced number of thoracic vertebral and rib ossification sites.

In the 26-day inhalation toxicity study, effects that were considered treatment related and adverse effects occurred only at the highest concentration tested. Systemic effects at this concentration consisted of significant reductions in red blood cell (RBC) parameters including RBC count, HGB concentrations, Hct, MCV, mean corpuscular HGB (MCH), and/or reticulocytes in both sexes. Portal-of-entry effects in this study consisted of an increased incidence of minimal nasal respiratory epithelial hyperplasia in both sexes as well as minimal laryngeal epithelial attenuation in all test material exposure groups. The effects on hematological parameters were reversible after 28 days of recovery, while the nasal injury persisted.

In an acute neurotoxicity (ACN) study in rats, effects consisted of an increased incidence of clinical signs of toxicity (staggered gait, splayed hind limbs, and abdominal gripping), changes in functional-observation battery (FOB) parameters, and decreased motor activity at a high dose level. Complete recovery was observed by day 14, and there was no evidence of neuropathology. In a rat subchronic neurotoxicity (SCN) study, clinical signs of toxicity, increased motor activity, and/or decreased body weights, body-weight gain, and food consumption were also observed with no evidence of neuropathology. A published, non-guideline developmental toxicity study in the rat did not conclusively demonstrate developmental neurotoxicity and contained several shortcomings that limit its use for regulatory purposes, including the lack of a no-observed-adverse-effect-level (NOAEL) (DeCastro VL, Destefani CR, Diniz C, Poli P., 2007, *Evaluation of neurodevelopmental effects on rats exposed prenatally to sulfentrazone.* Neurotoxicology 28(6):1249–59). The reported effects involving measures of physical and reflex development are likely secondary effects reflective of the poor general state of the offspring as reported in the rat 2-generation reproductive toxicity study at similar dose levels but with a well-defined NOAEL.

In the 28-day rat immunotoxicity study, there were no effects on the immune system and systemic effects consisted of reduced body weight, and increased absolute and relative spleen weights at the highest dose tested. Carcinogenicity studies in rats and mice showed no evidence of increased incidence of tumor formation due to treatment with sulfentrazone, and the EPA has classified sulfentrazone as not likely to be carcinogenic to humans. The available mutagenicity studies indicate that sulfentrazone is weakly clastogenic in the *in vitro* mouse lymphoma assay in the absence of S9 activation. There is no evidence that sulfentrazone is mutagenic in bacterial cells or clastogenic in male or female mice *in vivo.*

Specific information on the studies received and the nature of the adverse effects caused by sulfentrazone 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 document: ''Sulfentrazone—Preliminary Human-Health Risk Assessment for Registration Review and the Risk Assessment for the Section 3 Registration Request for a New Use on Apples'' at pp. 44–49 in docket ID number EPA–HQ–OPP–2013–0712.

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 the NOAEL and the LOAEL are identified. 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 sulfentrazone used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR SULFENTRAZONE 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 13–49 years of age).	NOAEL = 14 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.14 mg/kg/day. aPAD = 0.14 mg/kg/day.	2-generation Reproductive Toxicity Study—Rat Offspring Toxicity LOAEL = 33 (M) and 40 (F) mg/kg/day based on reduced prenatal viability (fetal & litter), reduced litter size, increased number of stillborn pups, reduced pup and litter postnatal survival, and decreased pup body weights throughout lactation.
Acute dietary (General population including infants and children).	NOAEL = 250 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 2.5 mg/kg/day. aPAD = 2.5 mg/kg/day.	Acute Neurotoxicity (ACN) Study—Rat LOAEL = 750 mg/kg/day based on increased incidence of clinical signs and FOB parameters and decreased motor activity.
Chronic dietary (All populations)	NOAEL = 14 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.14 mg/kg/day. cPAD = 0.14 mg/kg/day.	2-generation Reproductive Toxicity Study—Rat Offspring Toxicity LOAEL = 33 (M) and 40 (F) mg/kg/day based on reduced prenatal viability (fetal & litter), reduced litter size, increased number of stillborn pups, reduced pup and litter postnatal survival, and decreased pup body weights throughout lactation.
Incidental oral short- (1 to 30 days) and intermediate-term (1–6 months).	NOAEL = 14 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	2-Generation Reproductive Toxicity Study—Rat Offspring LOAEL = 33 mg/kg/day based on decreased pup body weights and reduced postnatal survival in both generations.
Dermal short-term (1 to 30 days).	Dermal study NOAEL = 100 mg/kg/day. UF_A = 10 x UF_H = 10 x FQPA SF = 1x	LOC for MOE = 100	Dermal Developmental Study—Rat LOAEL = 250 mg/kg/day based on decreased fetal body weight; increased incidences of fetal skeletal variations: hypoplastic or wavy ribs, incompletely ossified lumbar vertebral arches, and incompletely ossified ischia or pubes; and reduced number of thoracic vertebral and rib ossification sites.
Short-term (1–30 days) inhalation.	Portal-of-entry NOAEL = 0.256 mg/L, HEC = 0.054 mg/L, HED = 1.55. mg/kg/day UF_A = 3x UF_H = 10x FQPA SF = 1x	LOC for MOE = 30 ..	Portal-of-entry LOAEL = 1.71 mg/L based on an increased incidence of minimal nasal respiratory epithelial hyperplasia in male and female rats.
Cancer (Oral, dermal, inhalation).	Sulfentrazone is classified as not likely to be carcinogenic to humans		

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). HEC = human-equivalent concentration. HED = human-equivalent dose.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to sulfentrazone, EPA considered exposure under the petitioned-for tolerances as well as all existing sulfentrazone tolerances in 40 CFR 180.498. EPA assessed dietary exposures from sulfentrazone 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 sulfentrazone, and 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 acute population adjusted doses (aPADs). In estimating acute dietary exposures, EPA used the Dietary Exposure Evaluation Model, Food Consumption Intake Database (DEEM–FCID, ver. 3.16), which incorporates consumption data from United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA; 2003–2008). As to residue levels in food, EPA assumed tolerance-level residues, 100 percent crop treated (PCT), and DEEM (ver. 7.81) default processing factors.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used DEEM–FCID, ver. 3.16, which incorporated consumption data from the USDA's NHANES/WWEIA; 2003–2008. As to residue levels in food, EPA assumed tolerance-level residues, 100 PCT, and DEEM (ver. 7.81) default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that sulfentrazone 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.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for sulfentrazone. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for sulfentrazone in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of sulfentrazone. 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 Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of sulfentrazone for acute exposures are estimated to be 37.3 parts per billion (ppb) for surface water and 134 ppb for ground water; and for chronic exposures for non-cancer assessments are estimated to be 5.3 ppb for surface water and 98 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 134 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 98 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). Sulfentrazone is currently registered for the following uses that could result in residential exposures: Residential home lawns/turf and recreational turf, such as golf courses. EPA assessed residential exposures using the following assumptions: Adults were assessed for potential short-term dermal and inhalation handler exposures from applying sulfentrazone to residential turf/home lawns and for short-term postapplication dermal exposure from contact with treated residential and recreational turf.

Children, ages 11 < 16 years old and 6 < 11 years old, were assessed for postapplication dermal exposure from contact with treated residential and recreational turf (home lawns and golf courses). Children, ages 1 < 2 years old, were assessed for postapplication short-term dermal and incidental oral exposures (hand-to-mouth, object-to-mouth, and episodic ingestion of granules), as well as short- and intermediate-term incidental oral soil ingestion scenarios from contact with residential turf/home lawns.

The recommended adult residential exposure scenario for use in the aggregate assessment reflects short-term dermal exposure from applications to turf via backpack sprayer. The recommended residential exposure scenario for use in the combined short- and intermediate-term aggregate assessment for children ages 1 < 2 years old reflects dermal and hand-to-mouth exposures from postapplication exposure to turf applications. This combination should be considered a protective estimate of children's exposure to pesticides used on turf since the incidental oral scenarios are considered inter-related, likely occurring interspersed amongst each other across time; therefore, combining these scenarios would be overly-conservative because of the conservative nature of each individual assessment. In addition, the only potential intermediate-term exposure is postapplication soil ingestion which is significantly less than short-term hand-to-mouth exposure. Further, this scenario is considered protective of potential post-application exposures to children, ages 6 < 11 and 11 < 16 years old, as children 1–2 years old represent the population subgroup for children with the greatest exposure, and is therefore considered protective of other children population subgroups.

Chronic exposures are not expected and were not assessed. Finally, residential handler and/or postapplication inhalation risk estimates were not combined with dermal or oral risk estimates in the aggregate risk assessment since the toxicological effects in the inhalation toxicological study were portal-of-entry and were different from those seen in the dermal and oral toxicological studies. 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 sulfentrazone to share a common mechanism of toxicity with any other substances, and sulfentrazone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that sulfentrazone 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 quantitative susceptibility following *in utero* exposure in the oral and dermal rat developmental toxicity studies. Developmental effects, including decreased fetal body weights and reduced/delayed skeletal ossifications, were observed at doses that were not maternally toxic. In the 2-generation reproduction study in rats, offspring effects such as decreased body weights and decreased litter survival were observed at a slightly maternally toxic dose (slightly decreased body weight gain), indicating possible slightly increased qualitative susceptibility.

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 sulfentrazone is complete.

ii. In the ACN and SCN studies, observed effects included changes in motor activity and FOB parameters, clinical signs, and body-weight decrements. There is low concern for neurotoxicity since:

1. Effects were seen at relatively high doses;

2. Effects occurred in the absence of neuropathology;

3. There is no evidence of neurotoxicity in other available studies in the toxicity database;

4. Effects are well-characterized with clearly established NOAEL/LOAEL values; and

5. The selected PODs are protective of these effects.

iii. There was evidence for increased quantitative susceptibility following oral and dermal exposures in the developmental toxicity studies in rats. Although developmental toxicity was observed at lower doses than maternal toxicity in both studies in the rat, the concern is low based on the following considerations:

1. The toxicology database for assessing pre- and postnatal susceptibility is complete;

2. There are clear NOAELs and LOAELs for the developmental effects observed via both the oral and dermal routes;

3. The PODs used for assessing dietary and dermal exposure risks are based on developmental and/or offspring toxicity;

4. The portal-of-entry effects seen in the 26-day inhalation study are protective of the developmental toxicity; and

5. There are no residual uncertainties for pre- and/or postnatal toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The 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 sulfentrazone in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by sulfentrazone.

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. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to sulfentrazone will occupy 6.7% of the aPAD for females 13–49 years old, and 1.1% of the aPAD for all infants less than 1 year old, the population group receiving the greatest exposure for all populations other than females 13–49 years old.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to sulfentrazone from food and water will utilize 7.1% 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 sulfentrazone 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). Sulfentrazone 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 sulfentrazone.

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 an aggregate MOE of 480 for adults. Because EPA's level of concern for sulfentrazone is a MOE of 100 or below, this MOE is not of concern.

4. *Short- and intermediate-term risk.* Combined short- and intermediate-term aggregate exposures take into account short- and intermediate-term residential exposures plus chronic exposure to food and water (considered to be a background exposure level). Sulfentrazone is currently registered for uses that could result in short- and intermediate-term residential exposures, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures to sulfentrazone.

Using the exposure assumptions described in this unit for combined short- and intermediate-term exposures, EPA has concluded that the combined short- and intermediate-term food, water, and residential exposures result in an aggregate MOE of 260 for children 1–2 years old, the population subgroup for children with the greatest exposure. Because EPA's level of concern for sulfentrazone is a MOE of 100 or below, this MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, chemical name 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 sulfentrazone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, gas chromatography (GC), 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 a MRL for sulfentrazone.

C. Response to Comments

EPA received one comment to the Notice of Filing that made a general objection to the presence of any sulfentrazone residues on apple or any other crop. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by section 408 of the FFDCA states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework. The Agency has concluded after this assessment, that there is a reasonable certainty that no harm will result from aggregate human exposure to sulfentrazone.

D. Revisions to Petitioned-For Tolerances

EPA was petitioned to establish a tolerance in or on apple for residues of sulfentrazone and its metabolite HMS; however, upon review of the data supporting the petition, the Agency has determined that the apple tolerance should be established on the combined residues of the free and conjugated forms of sulfentrazone, including its metabolites HMS (*N*-(2,4-dichloro-5-(4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl)phenyl)methanesulfonamide) and DMS (*N*-(2,4-dichloro-5-(4-(difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl)phenyl)methanesulfonamide, calculated as the stoichiometric equivalent of sulfentrazone. EPA previously reviewed metabolism data and determined that the residues of concern are the parent compound, sulfentrazone, and the metabolites HMS and DMS (free and conjugated) in all crops except soybean seed, where the residues of concern are sulfentrazone and the metabolite HMS. Samples of raw agricultural and processed commodities from the apple studies were analyzed for residues of sulfentrazone and its metabolites DMS and HMS, and EPA is establishing an apple tolerance based upon those analyses.

V. Conclusion

Therefore, tolerances are established for residues of sulfentrazone, (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide), and its metabolites HMS (*N*-(2,4-dichloro-5-(4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl)phenyl)methanesulfonamide and DMS (*N*-(2,4-dichloro-5-(4-(difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl)phenyl)methanesulfonamide, calculated as the stoichiometric equivalent of sulfentrazone, in or on apple at 0.15 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance 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: September 4, 2014.

Lois Rossi,

Director, 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 § 180.498, add alphabetically the following commodity to the table in paragraph (a)(2) to read as follows:

§ 180.498 Sulfentrazone; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
Apple	0.15
* * * * *	

* * * * *

[FR Doc. 2014–21807 Filed 9–11–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Parts 1201 and 1202

[Docket No. OST–2014–0119]

RIN 2105–AE34

Organization and Delegation of Powers and Duties in the Transportation Acquisition Regulation

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule amends the Transportation Acquisition Regulation (TAR) to reflect the elevation of the Research and Innovative Technology Administration into the Office of the Secretary, creating the Office of the Assistant Secretary for Research and Technology. The amendment to TAR allows the Assistant Secretary for Research and Technology to have the same authority as the former Research and Innovative Technology Administrator. The change provides the Office of the Assistant Secretary for Research and Technology (formerly the Research and Innovative Technology Administration) the same authority as an Operating Administration, and provides the Assistant Secretary for Research and Technology to have the same authority as a Head of an Operating Administration.

DATES: This rule is effective September 12, 2014.

FOR FURTHER INFORMATION CONTACT: Lenita Ahmadi, Office of the Senior Procurement Executive, M–61, 1200 New Jersey Ave. SE., Washington, DC 20950, (202) 366–4974.

SUPPLEMENTARY INFORMATION: This final rule reflects changes made in Public Law 113–76, Division L, Title I—Department of Transportation, which states, ''Notwithstanding section 102 of title 49 and section 5315 of title 5, United States Code, there shall be an Assistant Secretary for Research and Technology within the Office of the Secretary, appointed by the President with the advice and consent of the Senate, to lead such office: *Provided further,* that any reference in law, regulation, judicial proceedings, or elsewhere to the Research and Innovative Technology Administration shall be deemed to be a reference to the Office of the Assistant Secretary for Research and Technology of the Department of Transportation.'' Accordingly, the Transportation Acquisition Regulation (TAR) has been revised to update references of the Research and Innovative Technology Administration to references of the Assistant Secretary for Research and Technology. This rule also provides for the Assistant Secretary for Research and Technology to have the same authority under TAR as the former Research and Innovative Technology Administrator.

A. Background

The U.S. Department of Transportation (DOT) has determined that changes to TAR are necessary to implement and align it with the Consolidated Appropriations Act, 2014. These changes are necessary in order to update references to the Research and Innovative Technology Administration (RITA) by replacing them with references to the Office of the Assistant Secretary for Research and Technology (OST–R). The changes are also necessary to ensure that the Assistant Secretary of OST–R continues to exercise the same authority under TAR as the Administrator of the former RITA.

B. Public Participation

This final rule does not impose new substantive requirements. It simply updates the CFR to reflect changes made by other law and represent the current organizational posture of the Department with regard to the Office of the Assistant Secretary for Research and Technology. The final rule is ministerial in nature and relates only to Departmental management, procedure, and practice. Therefore, the Department has determined that notice and comment are unnecessary and that the rule is exempt from prior notice and comment requirements under 5 U.S.C. 553(b)(3)(A). This rule will not have a substantive impact on the public, as it is purely organizational. Therefore, the Department finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective less than 30 days after publication in the **Federal Register**.

C. Regulatory Analysis and Notices

1. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The DOT has considered the impact of this rulemaking action under Executive Orders 12866 and 13563 (January 18, 2011, ''Improving Regulation and Regulatory Review''), and the DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). The Department has determined that this rule is not a significant regulatory action, and therefore, was not subject to review by the Office of Management and Budget under Executive Order 12866. There are no costs associated with this rule. The rule updates references to RITA to reflect its elevation into the Office of the Secretary as OST–R.

2. Executive Order 13132 (Federalism)

The Department has analyzed this final rule under the principals and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that it does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the preparation of a Federalism Assessment is not necessary.

3. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act, 5 U.S.C. 553, the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) do not apply. Even so, DOT has evaluated the effects of these changes on small entities and does not believe that this rule would impose any costs on small entities as it merely revises and clarifies TAR. Therefore, I hereby certify that this final rule does not have a significant

economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

4. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the Department must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, ''[p]romulgation of rules, regulations, and directives.'' 23 CFR 771.117(c)(20). The purpose of this rulemaking is to update TAR regulations to make them consistent with current law and to provide clarifications. The agency does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

5. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et seq.), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

6. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48, March 22, 1995) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. The UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal Government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $143.1 million or more in any one year (adjusted for inflation), an UMRA analysis is required. This action would not impose Federal mandates on any State, local, or tribal governments or the private sector.

List of Subjects

48 CFR Part 1201

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 1202

Government procurement.

This rule is issued this 28 day of August 2014, at Washington, DC, under authority delegated in 49 CFR 1.38a(a)(l).

Willie H. Smith,

Senior Procurement Executive.

For the reasons set out in the preamble, 48 CFR Chapter 12 is amended as follows:

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 1. The authority citation for part 1201 is revised to read as follows:

Authority: Pub. L. 113–76; 5 U.S.C. 301; 41 U.S.C. 418(b); (FAR) 48 CFR 1.3.

■ 2. Amend section 1201.104 by adding paragraph (e) to read as follows:

1201.104 Applicability.

* * * * *

(e) For purposes of the (FAR), (TAR) and (TAM), the Office of the Assistant Secretary for Research and Technology (formerly the Research and Innovative Technology Administration; see Public Law 113–76; Consolidated Appropriations Act, 2014) shall have the same authority as an Operating Administration as defined in (TAR) 1202.1, and the Assistant Secretary for Research and Technology shall have the same authority as a Head of the Operating Administration as defined in (TAR) 1202.1.

■ 3. In section 1201.105–2, revise paragraph (a) to read as follows:

1201.105–2 Arrangement of regulations.

(a) *General.* The (TAR) 48 CFR chapter 12, which encompasses both Department and Operating Administration (OA)/Office of the Assistant Secretary for Research and Technology (OST–R)-specific guidance (see (TAR) 48 CFR 1201.3), conforms with the arrangement and numbering system prescribed by (FAR) 48 CFR 1.104. Guidance that is OA/OST–R-specific contains the OA/OST–R's acronym directly after the heading. The following acronyms apply:

FHWA—Federal Highway Administration
FMCSA—Federal Motor Carrier Safety Administration
FRA—Federal Railroad Administration
FTA—Federal Transit Administration
MARAD—Maritime Administration
NHTSA—National Highway Traffic Safety Administration
OST—Office of the Secretary OST–R—Office of the Assistant Secretary for Research and Technology
PHMSA—Pipeline and Hazardous Material Safety Administration
SLSDC—Saint Lawrence Seaway Development Corporation

* * * * *

PART 1202—DEFINITIONS OF WORDS AND TERMS

■ 4. The authority citation for part 1202 is revised to read as follows:

Authority: Pub. L. 113–76; 5 U.S.C. 301; 41 U.S.C. 418b; (FAR) 48 CFR 1.3.

■ 5. In section 1202.1, in the definition of ''Operating Administration (OA),'' revise paragraph (10) to read as follows:

1202.1 Definitions.

* * * * *

Operating Administration (OA) * * *

(10) Office of the Assistant Secretary for Research and Technology (OST–R).

* * * * *

[FR Doc. 2014–21673 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0100; 4500030113]

RIN 1018–AY72

Endangered and Threatened Wildlife and Plants; Threatened Status for Arabis georgiana (Georgia rockcress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine threatened species status under the Endangered Species Act of 1973, as amended (Act), for *Arabis georgiana* (Georgia rockcress), a plant species in Georgia and Alabama. The effect of this regulation is to add

this species to the List of Endangered and Threatened Plants and extend the Act's protections to this species.

DATES: This rule is effective October 14, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/athens/*. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Georgia Ecological Services Office, 105 Westpark Dr., Suite D, Athens, GA 30606; telephone 706–613–9493.

FOR FURTHER INFORMATION CONTACT: Don Imm, Field Supervisor, U.S. Fish and Wildlife Service, 105 Westpark Dr., Suite D, Athens, GA 30606; telephone 706–613–9493; facsimile 706–613–6059. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We will refer to *Arabis georgiana* by its common name, Georgia rockcress, in this rule.

Elsewhere in this **Federal Register**, we publish the final rule designating critical habitat for the Georgia rockcress under the Act (16 U.S.C. 1531 *et seq.*).

Previous Federal Actions

Please refer to the proposed listing rule for the Georgia rockcress (78 FR 56192, September 12, 2013) for a detailed description of previous Federal actions concerning this species.

Background

Please refer to the proposed listing rule for the Georgia rockcress (78 FR 56192, September 12, 2013) for a summary of species information. The following section contains revisions to the proposed listing rule reflecting comments we received during peer review.

There are two species known to be syntopic (occurring on same site) with Georgia rockcress that are easily misidentified as Georgia rockcress. They are *Boechera canadensis* and *B. laevigata,* previously assigned to the genus *Arabis* (Al-Shehbaz 2003, pp. 381–391). Confusion with the two *Boechera* taxa could lead to an overestimate of abundance for Georgia rockcress.

Georgia rockcress generally occurs on steep river bluffs often with shallow soils overlaying rock or with exposed rock outcroppings. These edaphic conditions result in micro-disturbances, such as sloughing soils with limited accumulation of leaf litter or canopy gap dynamics, possibly with wind-thrown trees, which provide small patches of exposed mineral soil in a patchy distribution across the river bluff (Schotz 2010, p. 6). While Georgia rockcress needs small-scale disturbances with slightly increased light, limited competition for water, and exposed soils for seed germination, the species is a poor competitor and is easily outcompeted by aggressive competitors (Allison 1995, p. 8; Moffett 2007, p. 4; Schotz 2010, p. 9). Natural large-scale disturbances, such as fire and catastrophic flooding, are unlikely to occur on the steep river bluffs occupied by Georgia rockcress.

Populations of Georgia rockcress are healthiest in areas receiving full or partial sunlight. This species seems to be able to tolerate moderate shading, but it exists primarily as vegetative rosettes in heavily shaded areas (Moffett 2007, p. 4). Those populations occurring in forested areas will decline as the forest canopy closes. Allison (1999, p. 4) attributed the decline of a population in Bibb County, Alabama, to canopy closure. In addition, the small number of individuals at the majority of the sites makes these populations vulnerable to local extinctions from unfavorable habitat conditions such as extreme shading.

Georgia rockcress is rare throughout its range. Moffett (2007, p. 8) found approximately 2,140 plants from all known sites in Georgia. During surveys in 1999, Allison (1999, pp. 1–7) found that populations of this species typically had a limited number of individuals restricted to a small area. Of the nine known localities (six populations) in Georgia, Allison (1995, pp. 18–28) reported that six sites consisted of only 3 to 25 plants, and the remaining three sites had 51 to 63 individuals. However, a 2007 survey by Moffett (2007, p. 8) of the six Georgia populations resulted in counts of 5 or fewer plants at one population; 30 to 50 plants at two populations; 150 plants at one population; and two populations (greatly expanded from 1995) of almost 1,000 plants each. In 2009, plants could not be relocated at one Floyd County, Georgia, site, and only one plant was seen at another site where 25 to 50 had been documented in 2007 (Garcia 2012, p. 76; Elmore 2010, p. 1). Moffett (2007, pp. 1–2) indicated that the overall status of the three populations in the Ridge and Valley ecoregion (Floyd and Gordon Counties, Georgia) was poor, as these populations tended to be small, and declining in size and vigor. The largest population in Georgia is the multi-site Goat Rock Dam complex in the Piedmont province (Harris/Muscogee Counties) with approximately 1,000 flowering stems at last census (Garcia 2012, p. 76; Moffett 2007, p. 2). The Goat Rock Dam population has recently increased by 130 percent, which likely reflects management efforts to control invasive species by Georgia Power and the Georgia Plant Conservation Alliance. Fort Benning also supports a vigorous population with an estimated 1,000 plants (Garcia 2012, p. 76; Moffett 2007, p. 2). Georgia rockcress has been extirpated from its type locality near Omaha, Georgia, in Stuart County (Garcia 2012, p. 76; Moffett 2007, p. 2). At another site, Blacks Bluff, Georgia, rockcress had declined to a few individuals by 2007 (Garcia 2012, p. 76; Moffett 2007, p. 2), but 100 individuals were replanted in 2009. During a count done in 2013, 31 individuals were found to be surviving at the site, and more than 15,000 seeds were broadcast to supplement this population (Goldstrohm 2013, p. 1).

Schotz (2010, p. 8) documented fewer than 3,000 plants from all known sites in Alabama. Populations from Bibb County, Alabama, had between 16 and 229 plants, with 42 and 498 from Dallas County, 47 from Elmore County, 414 from Monroe County, 842 from Russell County, 4 from Sumter County, and 551 from Wilcox County. Allison (1999, pp. 2–4) originally documented this species at 18 localities (representing seven populations) in Bibb County. However, one of these Bibb County populations was not relocated during surveys in 2001 (Allison 2002, pers. comm.), and plants were not relocated at two other sites in Alabama (Schotz 2010, pp. 13, 57). Therefore, it is believed that Georgia rockcress has been extirpated from these three sites in Alabama.

Summary of Comments and Recommendations

In the proposed rule published on September 12, 2013 (78 FR 56192), we requested that all interested parties submit written comments on the proposal by November 12, 2013. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Atlanta Jounal-Constitution, Columbus Ledger, Montgemenry Advertiser, and Birmingham News. We conducted a public informational session and public

hearing in Columbus, Georgia, on May 28, 2014; no public comments were received, and only one individual attended the informational session.

Peer Reviewer Comments

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals with scientific expertise that included familiarity with Georgia rockcress and its habitat, biological needs, and threats. We received responses from all of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the listing of Georgia rockcress. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Comment: Two peer reviewers suggested that the Service should include several citations, figures, and a table from Garcia (2012).

Our Response: We have incorporated information from Garcia (2012) into this final rule, with citations included, in the Background section, above, and Summary of Biological Status and Threats section, below. Figures and tables will be posted as supplemental information on *http://www.regulations.gov.*

Comments From States

Both the States of Alabama and Georgia provided editorial comments on our proposed rule; these comments have been incorporated into this final rule as appropriate. The State of Georgia also provided additional detail about conditions on specific sites and recommended we add a brief discussion of two syntopic species, which we include in the Background section, above.

Public Comments

We received four public comments on the proposed listing determination during the public comment periods, and none on record at the public hearing. Only one of those comments was substantive; it is discussed below.

Comment: One commenter expressed concern that the Service had not provided information about why the Georgia rockcress is necessary, useful, or beneficial, and noted that the Service had not determined what the costs of conservation for this species would be or what would happen in a ''no action'' alternative.

Our Response: When Congress passed the Act in 1973, it found and declared that [America's] ''species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people'' (16 U.S.C. 1531(a)(3)). The purpose of the Act is to protect and recover imperiled species and the ecosystems upon which they depend. Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based solely on (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. We may not consider other criteria, including the value, use, or benefit associated with a species, in connection with the listing determination.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to Georgia rockcress. Habitat degradation (Factor A) and the subsequent invasion of nonnative species (Factor E) are the most serious threats to this species' continued existence. Disturbance, associated with timber harvesting, road building, and grazing, has created favorable conditions for the invasion of nonnative weeds, especially Japanese honeysuckle, in this species' habitat. Because nearly all populations are currently or potentially threatened by the presence of nonnatives, we find that this species is warranted for listing.

We do not analyze the economic impact of listing a species under the Act; however, an economic analysis is done for the designation of critical habitat and has been completed for this species. It can be found at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2013–0030. No analysis of a ''no action'' alternative is required under the Act; this is a requirement of the National Environmental Policy Act (42 U.S.C. 4321 et seq.). We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act, need not be prepared in connection with listing a species as an endangered or threatened species under the Act (see Required Determinations, below).

Summary of Changes From the Proposed Rule

All changes are largely editorial and are addressed in the response to peer reviewer comments (see *Peer Reviewer Comments,* above).

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

Please refer to the proposed listing rule for the Georgia rockcress (78 FR 56192, September 12, 2013) for a more complete description of the factors affecting this species. Our assessment evaluates the biological status of the species and threats affecting its continued existence. It is based upon the best available scientific and commercial data and the expert opinion of the species status assessment team members.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat fragmentation is a major feature of many landscapes within the eastern deciduous forest and creates boundaries or edges where disturbed patches of vegetation are adjacent to intact habitat. Disturbance events fragment the forest, creating edge habitat and promoting the invasion of nonnative species (Honu and Gibson 2006, pp. 263–264). Edges function as sources of propagules for disturbed habitats and represent complex environmental gradients with changes in light availability, temperature, humidity, wind speed, and soil moisture, with plant species responding directly to environmental changes (Meiners et al. 1999, p. 261). Edge effect, including any canopy break due to

timber harvest, fields, or maintained rights-of-way, may penetrate as far as 175 meters (574 feet), resulting in changes in community composition (Honu and Gibson 2006, p. 264; Gehlhausen et al. 2000, p. 21; Meiners et al. 1999, p. 266; Fraver 1994). Roads create a canopy break, destroy the soil profile, and disrupt hydrology of the bluff habitat. Roads are also known corridors for the spread of invasive plant species (Forman et al. 2003, pp. 75–112), as disturbed soil and the maintenance of open, sunny conditions create favorable conditions where invasive species can establish and spread into the forest interior (Fraver 1994, pp. 828–830). Aspect is an important factor in determining how forest microclimate and vegetation are influenced by the external environment (Gehlhausen et al. 2000, p. 30; Fraver 1994, pp. 828–830). Aspect likely increases the distance that the edge effect can influence microclimate and plays an important role on the steep bluff habitat occupied by Georgia rockcress. Edge effects are reduced by a protective border with buffers that eliminate most microhabitat edge effect (Honu and Gibson 2006, p. 255; Gehlhausen et al. 2000, p. 32).

Currently, habitat degradation is the most serious threat to this species' continued existence. Most of the Coastal Plain rivers surveyed by Allison (1995, p. 11) were considered unsuitable for Georgia rockcress because their banks had been disturbed to the point where there was no remaining vegetative buffer. Recent habitat degradation (i.e., vegetation denuded and replaced by hard-packed, exposed mineral soil) has occurred at several Georgia sites in association with residential development and campsites atop the bluffs (Moffett 2007, pp. 3–4). Disturbance associated with timber harvesting, road building, and grazing in areas where the plant exists has created favorable conditions for the invasion of nonnative weeds in this species' habitat (Factor E) (Schotz 2010, p. 10). Timber operations that remove the forest canopy promote early successional species and result in the decline of Georgia rockcress (Schotz 2010, p. 10). Encroachment of development, in the form of bridges, roads, houses, commercial buildings, or utility lines allowing for the introduction of nonnative species (Factor E), also results in the decline of Georgia rockcress (Schotz 2010, pp. 9–10; Moffett 2007, pp. 2–7; Allison 1995, pp. 7–18).

The riparian bluff habitat surrounding 18 of the known populations has been adversely impacted in some way, and in many cases the habitat has suffered multiple impacts. Blacks Bluff, Fort Benning (Georgia), McGuire Ford, Limestone Park, Prairie Bluff, and Fort Benning (Alabama) all have roads that bisect the habitat while Murphys Bluff, Pratts Ferry, Fort Tombecbee, and Resaca Bluffs have roads associated with bridges that impact bluff habitat (Schotz 2010, pp. 20–57; Moffett 2007, pp. 5–8; Allison 1999, pp. 3–8; Allison 1995, pp. 18–28). Housing development requires a road network and further impacts bluff habitat by creating canopy gaps and soil disturbances, with landscaping that may introduce nonnative plants. Whitmore Bluff, McGuire Ford, Prairie Bluff, Fort Tombecbee, and Creekside Glades have bluff habitat that has been impacted by housing development (Schotz 2010, pp. 20–57; Allison 1999, pp. 3–8). Commercial development has the same impact as housing; Resaca Bluff and Fort Tombecbee are impacted by commercial development (Schotz 2010, pp. 20–57; Moffett 2007, pp. 5–8; Allison 1999, pp. 3–8; Allison 1995, pp. 18–28). Impervious surfaces associated with housing and commercial development have increased runoff and provided access for dumping of trash on some sites. The Resaca Bluffs population is further disturbed by the long-term camping at the site. McGuire Ford and Fort Toulouse have maintained fields for pasture or recreational use (Schotz 2010, pp. 20–57; Allison 1999, pp. 3–8). The removal of the canopy to maintain a field provides an opportunity for nonnatives to invade. Utility lines have created canopy breaks at Creekside Glades, Little Schulz Creek, and Goat Rock Dam (Schotz 2010, pp. 20–57; Moffett 2007, pp. 5–8; Allison 1999, pp. 3–8; Allison 1995, pp. 18–28). Timber harvesting activities create soil disturbance and canopy breaks that provide access for nonnative plants to invade. Durant Bend, Portland Landing, Fort Gaines, Pratts Ferry, Fern Glade, and Sixmile Creek, and Whitmore Bluff have all been impacted by timber harvesting activates (Schotz 2010, pp. 20–57; Moffett 2007, pp. 5–8; Allison 1999, pp. 3–8; Allison 1995, pp. 18–28). While these impacts are to the bluff habitat that surrounds these populations, these disturbances eliminate potential habitat for expansion of populations, fragment the populations, and introduce nonnative species (Factor E).

TABLE 1—IMPACTS TO POPULATIONS OF GEORGIA ROCKCRESS FROM HUMAN-INDUCED FACTORS AND NONNATIVE PLANTS

Site name	County/State	Human-induced impact (Factor A)	Impacted by nonnative plants (Factor E)
Fort Tombecbee	Sumter/AL	Road with bridge, housing, commercial.	None.
Marshalls Bluff	Monroe/AL	Quarry	None.
Prairie Bluff	Wilcox/AL	Road, housing, hydropower	Chinese privet and Japanese honeysuckle.
Portland Landing River Slopes	Dallas/AL	Timber harvest, hydropower	China berrytree, Japanese honeysuckle, and kudzu.
Durant Bend	Dallas/AL	Timber harvest	Chinese privet and Japanese honeysuckle.
Murphys Bluff Bridge Cahaba River.	Bibb/AL	Road with bridge	Chinese privet, Japanese honeysuckle, and others.
Creekside Glades and Little Schulz Creek.	Bibb/AL	Housing, utility lines	None.
Cottingham Creek Bluff and Pratts Ferry.	Bibb/AL	Road with bridge, timber harvest	Chinese privet and Japanese honeysuckle.
Fern Glade and Sixmile Creek	Bibb/AL	Timber harvest	Chinese privet and Japanese honeysuckle.
Browns Dam Glade North and South.	Bibb/AL	None	Chinese privet.
McGuire Ford Limestone Park	Bibb/AL	Road, housing, maintained field	None.

TABLE 1—IMPACTS TO POPULATIONS OF GEORGIA ROCKCRESS FROM HUMAN-INDUCED FACTORS AND NONNATIVE PLANTS—Continued

Site name	County/State	Human-induced impact (Factor A)	Impacted by nonnative plants (Factor E)
Fort Toulouse State Park	Elmore/AL	Maintained field/recreation	Japanese honeysuckle.
Fort Gaines Bluff	Clay/GA	Timber harvest	Japanese honeysuckle.
Fort Benning (GA and AL)	Chattahoochee/GA, Russell/AL	Road	Chinese privet and Japanese honeysuckle.
Goat Rock North and South	Harris, Muscogee/GA	Hydropower, utility lines	Chinese privet and Japanese honeysuckle.
Blacks Bluff Preserve	Floyd/GA	Road, quarry	Nepalese browntop and Japanese honeysuckle.
Whitmore Bluff	Floyd/GA	Timber harvest, housing	Japanese honeysuckle.
Resaca Bluffs	Gordon/GA	Road with bridge, commercial, trash dumping, camping.	Chinese privet and Japanese honeysuckle.

Quarrying destroys the bluff habitat by removing the canopy and soil. The Blacks Bluff population of Georgia rockcress in Floyd County, Georgia, appears to be a surviving remnant of a once larger population. The primary habitat at this locality has been extensively quarried (Allison 1995, p. 10). The Marshalls Bluff population in Monroe County, Alabama, is adjacent to an area that was once quarried (Schotz 2010, pp. 45–47). Rock bluffs along rivers have also been favored sites for hydropower dam construction. The construction of Goat Rock Dam in Harris County, Georgia, destroyed a portion of suitable habitat for a population of Georgia rockcress, and the current population there may also represent a remnant of a once much larger population (Allison 1995, p. 10). The Prairie Bluff and Portland Landing populations in Wilcox and Dallas Counties, Alabama, occur on the banks of William ''Bill'' Dannelly Reservoir, where potential habitat was likely inundated (Schotz 2010, pp. 41 and 56). Due to the obscure nature of Georgia rockcress, it is likely that other populations on rocky bluffs, in the Piedmont and Ridge and Valley provinces, were destroyed by quarrying or inundated by hydropower projects (Allison 1995, p. 10).

Conservation efforts by The Nature Conservancy (TNC) in Bibb County, Alabama, have included the land acquisition of the entire population of Georgia rockcress at Browns Dam Glade and a small portion of the Cottingham Creek Bluff population, and the proposed acquisition of the Sixmile Creek population.

The Blacks Bluff Preserve population, Floyd County, Georgia, is in private ownership with a conservation easement held by TNC on the property. There were 27 Georgia rockcress reported on this site in 1995; however, the presence of nonnative species has since extirpated Georgia rockcress from this site. The Georgia Plant Conservation Alliance (GPCA) and TNC agreed to bolster the existing population with plants grown from seed collected from Blacks Bluff, and two planting sites have been established. In 2008, 100 Georgia rockcress plants were planted in this unit, with 31 Georgia rockcress surveyed on this site in 2013 (Goldstrohm 2013, p. 3). In April 2013, an additional 15,000 seeds where sown directly onsite to attempt to recruit new plants to this population (Goldstrohm 2013, p. 1).

Two populations are on land owned by the Federal Government, and two are on land owned by the State of Alabama. In Federal ownership, the entire Fern Glade population, Bibb County, Alabama, is on land owned by the Cahaba National Wildlife Refuge. Also, along the banks of the Chattahoochee River in Russell County, Alabama, and Chattahoochee County, Georgia, the entire population at Fort Benning is on land that is in Federal ownership. The Department of Defense (DOD) is aware of the two sites on the Fort Benning property and is working with TNC to monitor and provide for the conservation of these populations (Elmore 2010, pp. 1–2). In August 2014, DOD modified its integrated natural resources management plan (INRMP 2001) for Fort Benning to address Georgia rockcress and its habitat. The Prairie Bluff population, in Wilcox County, Alabama, may be within an area under a U.S. Army Corps of Engineers easement. The State of Alabama owns Fort Tombecbee in Sumtner County and Fort Toulouse State Park in Elmore County, but there is no protection afforded to these State-owned properties.

The majority of the Goat Rock Dam population in Georgia (Harris/Muscogee Counties) is mostly located on buffer lands of the Georgia Power Company and receives a level of protection in the form of a shoreline management plan with vegetative management buffers developed to prohibit disturbance and protect Georgia rockcress; this management plan was developed during Federal Energy Regulatory Commission (FERC) licensing (FERC 2004, pp. 7, 18–19, 29–30; Moffett 2007, p. 4). However, the southernmost portion of the Goat Rock Dam population is on privately owned land.

In total, at least some portions of nine populations are on land owned by potential conservation partners; however, with the exception of Ft. Benning's INRMP, none of these populations has a formal management plan to benefit Georgia rockcress. These populations are afforded varying degrees of protection, and while none of these lands is likely to be developed, they could be subject to other impacts including recreation, military training, road construction, inappropriate timber harvest, and continued pressure from invasive species. Only the Fort Benning population has a management plan that specifically directs management for the benefit of Georgia rockcress. The Goat Rock Dam and Blacks Bluff populations are on land on which efforts have been directed to managing for Georgia rockcress.

Historically, suitable habitat was destroyed or degraded due to quarrying, residential development, timber harvesting, road building, recreation, and hydropower dam construction. Severe impacts continue to occur across the range of this species, from quarrying, residential development, timber harvesting, road building, recreation, and hydropower dam construction, and one or more of these activities pose ongoing threats to all known populations. Given the extremely small size of Georgia rockress populations, projects that destroy even a small amount of habitat can have a

serious impact on this species, including existing genetic diversity of the species (Factor E).

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to pose a threat to this species (Allison 1995, p. 10; Moffett 2007, p. 2; Schotz 2010, p. 11).

Factor C: Disease or Predation

Limited browsing of Georgia rockcress plants has been noted in Georgia (Allison 1995, p. 10; Moffett 2007, p. 3; Schotz 2010, p. 11). However, disease and predation are not considered to be a threat to this species.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

Georgia rockcress is listed as threatened by the State of Georgia (Patrick et al. 1995, p. 17; Chaffin 2007, p. 47). This State listing provides legal standing under the Georgia Wildflower Preservation Act of 1973. This law prohibits the removal of this and other wildflower species from public land and regulates the taking and sale of plants from private land. This law also triggers the Georgia Environmental Protection Act process in the event of potential impacts to a population by State activities on State-owned land (Moffett 2007, p. 3). However, the greater problem of habitat destruction and degradation is not addressed by this law (Patrick et al. 1995, p. 6); therefore, there is no protection from projects like road construction, construction of reservoirs, installation of utility lines, quarrying, or timber harvest that degrade or fragment habitat, especially on private lands. Moreover, the decline of the species in Georgia is also attributed to invasive species (Factor E), and there are no State regulatory protections in place to ameliorate that threat on private lands. In Alabama, there is no protection or regulation, either direct or indirect, for Georgia rockcress (Schotz 2010, pp. 2, 11).

Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence

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).

While severe drought would be expected to have an effect on the plant community, including the mature canopy and canopy gap dynamic, and increased storm intensity could accelerate erosion-related disturbances, 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. In addition, we are not currently aware of any climate change information specific to the habitat of the Georgia rockcress that would indicate which areas may become important to the species in the future.

The primary threat to extant populations of Georgia rockcress is the ongoing invasion of nonnative species due to the degradation of its habitat. Encroachment from timber management and development in the form of bridges, roads, houses, commercial buildings, or utility lines allowing for the introduction of nonnative species has resulted in the decline of Georgia rockcress (Schotz 2010, pp. 9–10; Moffett 2007, pp. 2–7; Allison 1995, pp. 7–18). Human-induced disturbance (quarrying, residential development, timber harvesting, road building, recreation, and hydropower dam construction) has fragmented river bluff habitats and created conditions so that these bluff habitats are receptive to invasion of nonnative species (Honu and Gibson 2006, pp. 263–264). Disturbance of 14 of the 18 known sites occupied by this species has provided opportunities for the invasion of aggressive, nonnative weeds, especially *Lonicera japonica* (Japanese honeysuckle). This species is a gap adaptor, that can easily invade disturbed areas to 90 meters (295 feet) into a forested habitat (Honu and Gibson 2006, p. 264). Other nonnatives include *Melia azedarach* (Chinaberry or bead-tree), *Pueraria montana* var. *lobata* (kudzu), *Albizia julibrissin* (mimosa), *Ligustrum japonica* (Japanese privet), *Ligustrum sinense* (Chinese privet), *Lygodium japonicum* (Japanese climbing fern), and *Microstegium vimineum* (Napalese browntop) (Allison 1995, pp. 18–29; Moffett 2007, p. 9; Schotz 2010, pp. 10, 19–57). While edge habitats are subject to invasion of nonnative species, a more limited group of nonnative plants can then invade closed-canopy habitats; furthermore, species with a rosette form (e.g., Georgia rockcress) are more susceptible to exclusion by some nonnatives (Meiners et al. 1999, p. 266). Georgia rockcress is not a strong competitor and is usually found in areas where growth of other plants is restrained due to the shallowness of the soils or the dynamic status of the site (e.g., eroding riverbanks) (Allison 1995, pp. 7–8; Moffett 2007, p. 5). However, nonnative species are effectively invading these riverbank sites, and the long-term survival of the at least five populations in the Coastal Plain province is questionable (Allison 1995, p. 11). This species is only able to avoid competition with nonnative species where the soil depth is limited (e.g., rocky bluffs) (Allison 1995, pp. 7–8; Moffett 2007, p. 4)

Competition from nonnative species, exacerbated by adjacent land use changes (Factor A), likely contributed to the loss of the population at the type locality in Stewart County, Georgia (Allison 1995, p. 28), and possibly to one of the Bibb County, Alabama, populations and several other sites in this general area (Allison 2002, pers. comm.; Alabama Natural Heritage Program 2004, p. 2). Additional populations are also currently being negatively affected by competition with nonnative plants. According to Moffett (2007, p. 3), most of the sites in Georgia are being impacted by the presence of invasive plant species, primarily Japanese honeysuckle, Chinese privet, and Napalese browntop. Japanese honeysuckle was observed growing on individual plants of Georgia rockcress at three sites visited by Allison in 1995. At a fourth site, plants growing in a mat of Nepalese browntop declined in number from 27 individuals in 1995 (Allison 1995, p. 19) to 3 in 2006 (Moffet 2007 p. 8). Allison (1995, pp. 18–28; Allison 1999, pp. 1–5) considered four other populations to be imminently threatened by the nearby presence of nonnative plants. Thus, rangewide, approximately 40 percent of the populations visited by Allison in 1995 were reportedly threatened by nonnative species. By 2007, Moffett (2007, p, 3) reported all six of the Georgia rockcress populations in Georgia were threatened by nonnative species. By 2010, Schotz (2010, pp. 20–

57) reported 9 populations in Alabama were impacted by nonnative species. Currently 14 of the 18 extant populations are threatened by nonnatives.

Given the extremely low number of total plants (fewer than 5,000 in a given year; 12 of the 18 populations have fewer than 50 plants (Garcia 2012, p. 76; Schotz 2010, p. iii; Elmore 2010, pp. 1–4; Moffett 2007, pp. 2–7; Allison 1999, pp. 1–5; Allison 1995, pp. 7–18)), and because the species is distributed as disjunct populations across sixphysiographic provinces (Schotz 2010, pp. 9–10; Moffett 2007, pp. 2–7; Allison 1995, pp. 7–18) in three major river systems, each population is important to the conservation of genetics for the species (Garcia 2012, pp. 30–36). Only the Goat Rock Dam and Fort Benning populations are sufficiently large (greater than 1,000 individuals) to preclude a genetic bottleneck (Schotz 2010, pp. 13–57; Moffett 2007, p. 8). A genetic bottleneck would result in reduced genetic diversity with mating between closely related individuals, which can lead to reduced fitness due to inbreeding depression (Garcia 2012, Chapter 1; Ellstrand and Elam, pp. 217–237). This species is composed of three genetic groups: A North Georgia group, a Middle Georgia group, and an Alabama group (Garcia 2012, p. 32). While the Middle Georgia genetic group contains the largest populations (Goat Rock Dam and Fort Benning) and is the most important to the conservation of this species, the smaller populations in the North Georgia and Alabama genetic groups are more vunerable to localized extirpation and represent an important conservation element for this species. Any threats that remove or further deteriorate populations can also have a detrimental effect on the existing genetic diversity of the species.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to Georgia rockcress. Habitat degradation (Factor A) and the subsequent invasion of nonnative species (Factor E), more than outright habitat destruction, are the most serious threats to this species' continued existence. The riparian bluff habitat surrounding all 18 of the known populations has been adversely impacted in some way, and in some cases the habitat has suffered multiple impacts. As described above in Table 1, all sites are affected by one or more threats leading to habitat degration or nonnative species invasion. Specifically, in two locations, bluff habitat was quarried for limestone, resulting in the destruction of bluff habitat. Four sites have roads with bridges, and eight sites have roads that pass through or provide access to buildings. Five sites have been impacted by housing, and two sites are impacted by commercial buildings. Six sites have been impacted by timber management. Two sites have maintained fields, one of which is maintained for recreation, that encroach on bluff habitat and potential habitat has been inundated at three sites, and transmission lines bisect two sites. Because these sites are relatively small, even a single road corridor can have substantial impact on the population. While the initial infrastructure is already in place from many of these impacts, they continue to pose a threat to populations as they provide a means for nonnative species to overtake these sites. These threats are likely to continue slowly over time. However, they are of high severity because they often completely destroy the habitat and provide continuing opportunities for the introduction of nonnative species (Factor E).

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that the Georgia rockcress is likely to become endangered throughout its entire range within the forseeable future, based on the immediacy, severity, and scope of the threats described above. However, we do not find the Georgia rockcress to meet the definition of an endangered species at this time because there are sufficient sites spread across the geographic range to ensure that the species is unlikely to be in danger of extinction throughout all or a significant portion of its range. Therefore, on the basis of the best available scientific and commercial information, we are listing the Georgia rockcress (*Arabis georgiana*) as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Significant Portion of the Range

Because we have determined that Georgia rockcress is threatened throughout all of its range, no portion of its range can be ''significant'' for purposes of the definitions of ''endangered species'' and ''threatened species.'' See the Service's significant portion of the range (SPR) policy (79 FR 37578, July 1, 2014).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans.

When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered* or *http://www.fws.gov/athens/*), or from our Georgia Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final listing rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State(s) of Alabama and Georgia will be eligible for Federal funds to implement management actions that promote the protection or recovery of the Georgia rockcress. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the Georgia rockcress. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Service or the DOD; issuance of permits under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened plants. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.61 for endangered plants and at 50 CFR 17.71 for threatened plants, in part, make it illegal for any person subject to the jurisdiction of the United States to import, export, transport in interstate commerce in the course of commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. It is also unlawful to violate any regulation pertaining to plant species listed as endangered or threatened (section 9(a)(2)(E) of the Act).

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened plants species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 17.72 for threatened plants. With regard to endangered and threatened plants, a permit issued under this section must be for one of the following: scientific purposes, the enhancement of the propagation or survival of threatened species, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of listed species. The following activities could potentially result in a violation of section 9 of the Act: Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Georgia Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Under section 4(d) of the Act, the Secretary has discretion to issue such regulations as she deems necessary and advisable to provide for the conservation of threatened species. Our implementing regulations (50 CFR 17.61 and 17.71) for endangered and threatened plants generally incorporate the prohibitions of section 9 of the Act for endangered plants, except when a rule promulgated pursuant to section 4(d) of the Act (4(d) rule) has been issued with respect to a particular threatened species. In such a case, the general prohibitions in 50 CFR 17.61 and 17.71 would not apply to that species, and instead, the 4(d) rule would define the specific take prohibitions and exceptions that would apply for that particular threatened species, which we consider necessary and advisable to conserve the species. With respect to a threatened plant, the Secretary of the Interior also has the discretion to prohibit by regulation any act prohibited by section 9(a)(2) of the Act. Exercising this discretion, which has been delegated to the Service by the Secretary, the Service has developed general prohibitions that are appropriate for most threatened species in 50 CFR 17.71 and exceptions to those prohibitions in 50 CFR 17.72. We are not promulgating a 4(d) rule for Georgia rockcress and as a result, all of the section 9(a)(2) general prohibitions, including the ''take'' prohibitions, will apply to Georgia rockcress.

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. This species is not currently known to occur on tribal lands.

References Cited

A complete list of all references cited in this rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Ecological Services Office in Athens, Georgia (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Ecological Services Office in Athens, Georgia (see **FOR FURTHER INFORMATION CONTACT**).

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 § 17.12(h) by adding an entry for ''*Arabis georgiana*'' to the List of Endangered and Threatened Plants in alphabetical order under Flowering Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Arabis georgiana	Georgia rockcress	U.S.A. (GA, AL)	Brassicaceae	T	849	17.96(a)	NA
*	*	*	*	*	*		*

* * * * *

Dated: August 29, 2014.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–21394 Filed 9–11–14; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0030; 4500030113]

RIN 1018–AZ55

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Georgia Rockcress

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, designate critical habitat for *Arabis georgiana* (Georgia rockcress) under the Endangered Species Act of 1973, as amended (Act). In total, we are designating approximately 297 hectares (732 acres) of riparian, river bluff habitat in Georgia, including parts of Gordon, Floyd, Harris, Muscogee, and Clay Counties, and in Alabama, including parts of Bibb, Dallas, Elmore, Monroe, Sumter, and Wilcox Counties, as critical habitat for this species.

DATES: This rule is effective October 14, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/athens/*. Comments and materials we received, as well as some supporting documentation we used in preparing this final rule, are available for public inspection at *http://www.regulations.gov*. 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, Georgia Ecological Services Office, 105 Westpark Dr., Suite D, Athens, GA 30606; telephone 706–613–9493; facsimile 706–613–6059.

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0030, at *http://www.fws.gov/athens/*, and at the Ecological Services Office in Athens, Georgia, (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Don Imm, Field Supervisor, U.S. Fish and Wildlife Service, 105 Westpark Dr., Suite D, Athens, GA 30606; telephone 706–613–9493; facsimile 706–613–6059. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We will refer to *Arabis georgiana* by its common name, Georgia rockcress, in this final rule.

Executive Summary

Why we need to publish a rule. Under the Act, when we determine that any species is an endangered or threatened species, we must designate critical habitat, to the maximum extent prudent and determinable. Designations of critical habitat can only be completed by issuing a rule in the **Federal Register**.

Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

In total, we are designating 17 critical habitat units with approximately 297 hectares (732 acres) of riparian, river bluff habitat for the species. Five critical habitat units are located in Georgia, including parts of Gordon, Floyd, Harris, Muscogee, and Clay Counties, and 12 critical habitat units in Alabama, including parts of Bibb, Dallas, Elmore, Monroe, Sumter, and Wilcox Counties.

The basis for our action. Under the Act, if we intend to list a species as endangered or threatened throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** to list the species as endangered or threatened and make a determination on our proposal within 1 year. We are required under the Act to designate critical habitat, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act concurrently with listing.

Elsewhere in this **Federal Register**, we publish a final rule listing the species as a threatened species under the Act.

We have prepared an economic analysis of the designation of critical habitat. We have prepared an analysis of the economic impacts of the critical habitat designation and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on May 9, 2014 (79 FR 26679), allowing the public to provide comments on our analysis. We address the comments in this final designation.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. Specifically, we obtained opinions from three knowledgeable individuals with scientific expertise to review our technical assumptions and analysis, and whether or not we used the best available information. These peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated into this final designation. We also considered all comments and information received from the public during the comment period, and we held a public hearing on May 28, 2014.

Previous Federal Actions

Please refer to the proposed listing rule for the Georgia rockcress (78 FR 56192, September 12, 2013) for a detailed description of previous Federal actions concerning this species.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Georgia rockcress during two comment periods. The first comment period opened with the publication of the proposed rule (78 FR 56506) on September 12, 2013, and closed on November 12, 2013. The second comment period, during which we requested (79 FR 26679) comments on the proposed critical habitat designation and associated draft economic analysis (DEA), opened May 9, 2014, and closed on June 9, 2014. We received no comments during a public hearing in Columbus, Georgia, on May 28, 2014. 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 DEA.

During the first comment period, we received one comment letter from the public addressing the proposed critical habitat designation. During the second comment period, we received one comment letter from the public addressing the proposed critical habitat designation. Comments received from the public stated opinions that were not focused on the issue. No substantive comments were received on this rule from the public in either of the comment periods. We also received a letter of support from the State of Georgia.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three 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 all three of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the Georgia rockcress. The peer reviewers generally concurred with our methods and conclusions. They provided only editorial comments, which are incorporated into the final rule as appropriate.

Summary of Changes From Proposed Rule

In August 2014, Fort Benning, in which proposed critical habitat units 14A and 14B are located, completed a revision to its integrated natural resources management plan (INRMP), which includes specific measures for the Georgia rockcress and its habitat. We determine that the revised INRMP provides a benefit to the species. Pursuant to section 4(a)(3) of the Act (16 U.S.C. 1531 *et seq.*), lands covered by the revised INRMP are exempt from the final designation. We have exempted Units 14A Fort Benning (GA) and 14B Fort Benning (AL) from this final designation of critical habitat.

Additionally, we have made corrections to acreages and unit numbers in the proposed rule. In the proposed rule, we listed Unit 7A as having 12 hectares (ha) (29 acres (ac)) and Unit 9B as having 13 ha (21 ac), and the total area of designated critical habitat was 323 ha (786 ac). The corrected numbers are 11 ha (26 ac) for Unit 7A and 13 ha (32 ac) for Unit 9B; with the exemption of Units 14A and 14B (25 ha (61 ac)), the total area of critical habitat is 297 ha (732 ac). Furthermore, due to the exemption of the Fort Benning units from the critical habitat designation, the remaining units have been renumbered in the final rule as Units 1 through 17 by shifting some of them up one number (i.e., 15A became 14A, 15B became 14B, and so forth). The revised unit numbers and their descriptions can be found in the Final Critical Habitat Designation section later in this rule.

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. 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.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which

areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features required for Georgia rockcress from studies of this species' habitat, ecology, and life history, as described below.

Space for Individual and Population Growth and for Normal Behavior

Georgia rockcress is known from the Lower Gulf Coastal Plain, Upper Gulf Coastal Plain, Red Hills, Black Belt, Piedmont, and the Ridge and Valley Physiographic Provinces (Schotz 2010, p. 6; Allison 1995, p. 6), generally occurring within regions underlain or otherwise influenced by sandstone, granite, and limestone (Moffett 2007, p. 1; Schotz 2010, p. 6). This species occurs on soils that are circumneutral to slightly basic (or buffered) and is primarily associated with high bluffs along major river courses, with dry-mesic to mesic soils of open, rocky, woodland and forested slopes, including shallow soil accumulations on rocky bluffs, ecotones of sloping rock outcrops, and sandy loam along eroding riverbanks (Moffett 2007, p. 1; Schotz 2010, p. 6). The habitat supports a relatively closed to open canopy of deciduous trees with a rich diversity of grasses and forbs characterizing the herb layer (Schotz 2010, p. iii). Therefore, we identify well-drained soils that are buffered or circumneutral to be a physical or biological feature for this species.

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

Georgia rockcress generally occurs on steep river bluffs often with shallow soils overlaying rock or with exposed rock outcroppings. These specialized soil conditions result in micro-disturbances, such as sloughing soils with limited accumulation of leaf litter or canopy gap dynamics, possibly with wind-thrown trees, which provide small patches of exposed mineral soil in a patchy distribution across the river bluff (Schotz 2010, p. 6). Georgia rockcress is a poor competitor (Allison 1995, p. 8; Moffett 2007, p. 4; Schotz 2010 p. 9); therefore, small-scale disturbances are critical for this species. Exposed mineral soil provides for seed to soil contact for good germination and allows Georgia rockcress to occupy habitat with limited competition for light, mineral, and water resources. Therefore, we identify large river bluffs with steep slopes and/or shallow soils that are subject to localized disturbances to be a physical or biological feature for this species.

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

Georgia rockcress generally occurs at sites with a substantial, mixed-level canopy with spatial heterogeneity, which provides for mixed sunlight and shade throughout the day and impedes invasive species. The habitat supports a relatively closed to open canopy of *Juniperus virginiana* (eastern red cedar), *Ostrya virginiana* (American hophornbeam), *Quercus muehlenbergii* (chinquapin oak), *Fraxinus americana* (white ash), *Acer barbatum* (southern sugar maple), and *Cercis canadensis* (eastern redbud) with a rich diversity of grasses and forbs characterizing the herb layer (Schotz 2010, p. iii). Georgia rockcress generally occurs on sites with a mature canopy providing partial shading (Moffett 2007, p. 4). Although Georgia rockcress can survive deep shade primarily as a vegetative rosette without flowering or fruiting (Allison 1995, p. 7; Moffett 2007, p. 4; Schotz 2010, p. 10), it cannot reproduce in heavily shaded conditions. It is often the mature trees grown on shallow soils that are subject to wind throw. Therefore, we identify a mature, mixed-level canopy with spatial heterogeneity to be a physical or biological feature for this species.

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

While Georgia rockcress needs small-scale disturbances to exploit, the species is a poor competitor and is easily outcompeted by aggressive competitors. Natural large-scale disturbances, such as fire and catastrophic flooding, are unlikely to occur on the steep river bluffs occupied by Georgia rockcress. Edge effects may penetrate as far as 175 meters (m) (574 feet (ft)), resulting in changes in community composition (Gehlhausen et al. 2000, p. 21). Aspect is an important factor in determining how forest microclimate and vegetation are influenced by the external environment (Gehlhausen et al. 2000, p. 30) and likely plays an important role on bluff habitat inhabited by Georgia rockcress. Edge effects are reduced by a protective vegetative border with buffers eliminating most microhabitat edge effects (Honu and Gibson 2006, p. 255; Gehlhausen et al. 2000, p. 32). Management strategies for the control of invasive plants should encourage canopy closure of greater than 85 percent for forested stands (Honu and Gibson 2006, p. 255). Therefore, we identify the intact habitat that is buffered to impede the invasion of nonnatives to be a physical or biological feature for this species.

Primary Constituent Elements for the Georgia rockcress

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of Georgia rockcress 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.

The critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of Georgia rockcress. We believe the conservation of Georgia rockcress is dependent upon the protection and management of sites where existing populations grow, and the maintenance of normal ecological functions within these sites. 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 Georgia rockcress are:

(1) Large river bluffs with steep and/or shallow soils that are subject to localized disturbances that limit the accumulation of leaf litter and competition within the Lower Gulf Coastal Plain, Upper Gulf Coastal Plain, Red Hills, Black Belt, Piedmont, and Ridge and Valley Physiographic Provinces of Georgia and Alabama.

(2) Well-drained soils that are buffered or circumneutral generally within regions underlain or otherwise influenced by granite, sandstone, or limestone.

(3) A mature, mixed-level canopy with spatial heterogeneity, providing mottled shade and often including species such as eastern red cedar, America hophornbeam, chinquapin oak, white ash, southern sugar maple, and redbud with a rich diversity of grasses and forbs characterizing the herb layer.

(4) Intact habitat that is fully functional (i.e., with mature canopy and discrete disturbances) and buffered by surrounding habitat to impede the invasion of competitors.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. A fully functioning bluff habitat (i.e., with mature canopy and discrete disturbances) is required to provide the features essential to the conservation of this species and may require special management considerations or protection to reduce the following threats: Land-clearing activities that alter the canopy, including silvicultural management, building of utility lines, structures, roads, or bridges; construction of reservoirs that inundate habitat; mining activities; or introduction of invasive species that compete directly with Georgia rockcress. Large-scale disturbances, such as fire or soil-disturbing activities, should be minimized. A mature canopy with spatial heterogeneity should be maintained to impede invasive species while providing an opportunity for localized disturbances as canopy-gap dynamics develop. Invasive species should be eliminated from the critical habitat units. A mature canopy on the bluffs and a surrounding buffer area will help to exclude nonnatives.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If after identifying currently occupied areas, a determination is made that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e) we then consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species.

For the Georgia rockcress, we are not designating any areas outside the geographical area occupied by the species because occupied areas are sufficient for the conservation of the species. The 17 critical habitat units capture populations across the known range of the species, providing conservation in six different physiographic provinces in three different river drainages. This effectively protects against the loss of one of the three genetic groups and provides for the expansion of all known genetic groups in each physiographic province.

In preparing this rule, we reviewed and summarized the current information available on Georgia rockcress; the information used includes known locations, our own site-specific species and habitat information, Statewide Geographic Information System (GIS) coverages (e.g., soils, geologic formations, and elevation contours), the Natural Resources Conservation Service's soil surveys, recent biological surveys and reports, peer-reviewed literature, and discussions and recommendations from Georgia rockcress experts.

As discussed below, when determining critical habitat boundaries we made every effort to avoid including developed areas such as lands covered by water, buildings, pavement, and other structures because such lands lack physical or biological features for Georgia rockcress. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the final rule and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this rule. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0030, on our Internet site at *http://www.fws.gov/athens/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Final Critical Habitat Designation

We are designating 17 units as critical habitat for Georgia rockcress. As described below, the critical habitat areas constitute our current best assessment of areas that meet the definition of critical habitat for Georgia rockcress. All of the designated areas are occupied. Except as noted, all of the units contain all of the PCEs and require special management consideration or protection to address the threats (see discussion above) and to ensure their contribution to the conservation of Georgia rockcress. Unit names were derived from reports generated from previous survey efforts (Schotz 2010, pp. 20–57; Moffett 2007, pp. 5–8; Allison 1999, pp. 3–8; Allison 1995, pp. 18–28), to promote continuity with monitoring efforts. Goat Rock Dam (Unit 14 A/B) provides the highest conservation value to the overall designation, having the largest population outside of Ft. Benning. The other units provide the representation and redundancy needed to support viability of the species across six physiographic provinces and multiple river basins.

TABLE 1—FINAL CRITICAL HABITAT UNITS FOR GEORGIA ROCKCRESS

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

Unit #	Unit name	County/State	Ownership	Hectares	Acres
1	Fort Tombecbee	Sumter/AL	State	6	14
2	Marshalls Bluff	Monroe/AL	Private	11	27
3	Prairie Bluff	Wilcox/AL	Private	13	32

TABLE 1—FINAL CRITICAL HABITAT UNITS FOR GEORGIA ROCKCRESS—Continued

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

Unit #	Unit name	County/State	Ownership	Hectares	Acres
4	Portland Landing River Slopes	Dallas/AL	Private	12	31
5	Durant Bend	Dallas/AL	Private	12	28
6	Murphys Bluff Bridge Cahaba River	Bibb/AL	Private	11	26
7A	Creekside Glades	Bibb/AL	Private	11	26
7B	Little Schulz Creek	Bibb/AL	Private	12	28
8A	Cottingham Creek Bluff	Bibb/AL	Private	22	55
8B	Pratts Ferry	Bibb/AL	Private	11	28
9A	Fern Glade	Bibb/AL	Federal	14	34
9B	Sixmile Creek	Bibb/AL	Private	13	31
10A	Browns Dam Glade North	Bibb/AL	Private	14	35
10B	Browns Dam Glade South	Bibb/AL	Private	15	37
11	McGuire Ford √ Limestone Park	Bibb/AL	Private	6	15
12	Fort Toulouse State Park	Elmore/AL	State	7	17
13	Fort Gaines Bluff	Clay/GA	Private	17	42
14A	Goat Rock North	Harris/GA	Private	7	19
14B	Goat Rock South	Harris, Muscogee/GA	Private	24	59
15	Blacks Bluff Preserve	Floyd/GA	Private	37	92
16	Whitmore Bluff	Floyd/GA	Private	17	43
17	Resaca Bluffs	Gordon/GA	Private	5	13
Total				297	732

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 Georgia rockcress, below.

Critical Habitat Unit Descriptions

We are designating a total of 17 critical habitat units for Georgia rockcress located in Georgia, including parts of Clay, Floyd, Gordon, Harris, and Muscogee Counties, and in Alabama, including parts of Bibb, Dallas, Elmore, Monroe, Wilcox, and Sumter Counties. In order to provide definite legal descriptions of the critical habitat boundaries, we drew polygons around these units, using as criteria the plant's primary constituent elements, the known extent of the populations, and the elevation contours on the map. We made an effort to avoid developed areas that are unlikely to contribute to the conservation of Georgia rockcress. However, some areas within the boundaries of the mapped units, such as buildings, roads, clearings, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements. Accordingly, Federal actions limited to these areas would not trigger consultation under section 7 of the Act, unless they otherwise affect the species or its primary constituent elements in the critical habitat.

Unit 1. Fort Tombecbee, Sumter County, Alabama

The 6-ha (14-ac) Fort Tombecbee unit is approximately 0.5 kilometers (km) (0.3 miles (mi)) northeast of the city of Epes, Alabama, and is owned by the University of West Alabama. This Georgia rockcress occurrence inhabits the crest and steep slopes of a deeply incised stream bank overlooking a small intermittent creek approximately 91 m (300 ft) upstream from its confluence with the Tombigbee River. Livestock grazing was observed during a visit made in May 2010, in a portion of the site where the species was previously observed; it is conceivable that livestock may have further impacted the occurrence. Only four plants were found in 2010 (Schotz 2010, p. 51). The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with road crossings, development and potentially grazing.

Unit 2. Marshalls Bluff, Monroe County, Alabama

The 11-ha (27-ac) Marshall Bluff unit is a privately owned tract 9.6 km (6 mi) southwest of Perdue Hill, Alabama, on the eastern bank of the Alabama River on a high bluff (Marshalls Bluff) overlooking the Alabama River. An abandoned quarry exists approximately 150 m (500 ft) distant to the east, and while the quarry may have destroyed bluff habitat, the quarry currently poses no threat to the occurrence, and there are no plans to expand the quarry (Schotz 2010, p. 22). More than 400 plants were found in 2010. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with mining.

Unit 3. Prairie Bluff, Wilcox County, Alabama

Privately owned, the 13-ha (32-ac) Prairie Bluff unit is located along the banks of the Millers Ferry (William ''Bill'' Dannelly) Reservoir, approximately 1.6 km (1 mi) north of the Lee Long Bridge on State Route 28. Georgia rockcress is scattered along the bluffs and ravines associated with the Alabama River. Nonnative species, most notably *Ligustrum sinense* (Chinese privet) and *Lonicera japonica* (Japanese honeysuckle), threaten this site (Allison 1999, p. 2; Schotz 2010, pp. 54–55). More than 500 plants were found in this unit in 2010; however, some habitat was likely inundated by the reservoir. This site is slated for residential development with lakeside lots, and the infestation of nonnatives will likely become worse. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with roads, development, hydropower, and nonnative species.

Unit 4. Portland Landing River Slopes, Dallas County, Alabama

Privately owned, the 12-ha (31-ac) Portland Landing River Slopes unit is located 18 km (11.5 mi) south of Orrville, Alabama, on the south side of the Alabama River at Portland Landing. This occurrence of Georgia rockcress is restricted to the unstable, highly

erodible, sandy soils along the bank of the Alabama River. Nonnatives, most notably *Melia azedarach* (Chinaberry or bead-tree), Japanese honeysuckle, and *Pueraria montana* var. *lobata* (kudzu), are present, and although not severe, these nonnatives will persist without active management (Schotz 2010, p. 40). In 2010, 498 Georgia rockcress plants were recorded (Schotz 2010, p. 40). The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with timber harvest, hydropower, and nonnative species.

Unit 5. Durant Bend, Dallas County, Alabama

Privately owned, the 12-ha (28-ac) Durant Bend unit occurs 16 km (10 mi.) east of Selma in a sharp bend on the Alabama River. Fewer than 50 plants were reported in sandy alluvium along the Alabama River under a partially open to filtered canopy in 2010 (Schotz 2010, p. 37). While the majority of plants occur in forested conditions, a small number of plants were observed in relatively open and exposed soils of actively eroding sections of the riverbank. Nonnatives, including Chinese privet and Japanese honeysuckle, are present but not severe. Timber harvesting has recently taken place approximately 46 m (150 ft) north of the site, but it currently has not impacted species' viability or habitat integrity (Schotz 2010, p. 37). The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with timber harvest and nonnative species.

Unit 6. Murphys Bluff Bridge Cahaba River, Bibb County, Alabama

Privately owned, the 11-ha (26-ac) Murphys Bluff Bridge Cahaba River unit is 11.4 km (7 mi) southwest of Centreville, Alabama, and located along the west bank of the Cahaba River downstream (southwest) of the Murphy Road Bridge. Chinese privet, Japanese honeysuckle, and other nonnatives are present, but are relatively sparse. Infestation of nonnative plants could worsen. Timber harvesting has been observed nearby and may pose a potential concern (Schotz 2010, p. 22). Sixteen Georgia rockcress plants were found at this location during the 2010 survey. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with road crossings and nonnative species.

Unit 7A. Creekside Glades, Bibb County, Alabama

Privately owned, the 11-ha (26-ac) Creekside Glades subunit is located 9.6 km (6 mi) north-northeast of Centreville, Alabama, along the banks of Little Schultz Creek. Georgia rockcress occurs in association with a small dolomite glades complex on either side of Little Schultz Creek. The plants (mostly rosettes, i.e., non-reproductive) predominantly occur in the ecotone of the glades and the encompassing woodland, in association with a mix of shrubs and low-growing trees. A smaller number of individuals (mostly mature) can be found in the glades and surrounding woodlands (Allison 1999, p. 2; Schotz 2010, p. 30). This subunit contained 42 plants in 2010. A utility line right-of-way passes through this subunit, and while there is no canopy on the right-of-way, it provides essential supporting habitat such that the right-of-way has not been excluded from critical habitat. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats associated with development and utility right-of-way maintenance.

Unit 7B. Little Schulz Creek, Bibb County, Alabama

Privately owned, the 12-ha (28-ac) Little Schulz Creek subunit is located 8.9 km (5.5 mi) north-northeast of Centreville, Alabama. In 2010, 29 plants occurred on limestone outcrops along the west bank of the Cahaba River. The site is characterized as a bouldery limestone woodland situated along a low bluff overlooking the Cahaba River. Georgia rockcress inhabits shallow soils associated with the bluff, occurring under an open to lightly shaded canopy (Schotz 2010, p. 32). This subunit consisted of 29 plants in 2010. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats associated with development and utility right-of-way maintenance.

Unit 8A. Cottingham Creek Bluff and Unit 8B. Pratts Ferry, Bibb County, Alabama

Privately owned, the Cottingham Creek Bluff subunit is located on the east side of the Cahaba River, upstream of Pratts Ferry Bridge, 10 km (6.2 mi) northeast of Centreville, Alabama. The Pratts Ferry subunit is located on the west side of the Cahaba River, downstream of Pratts Ferry Bridge, 10 km (6.2 mi) northeast of Centreville, Alabama. A small portion (26 percent (5.88 ha (14.5 ac)) of the Cottingham Creek Bluff subunit is owned by The Nature Conservancy (TNC). A small number of plants are confined to an abandoned limestone quarry several hundred feet back from the southeastern side of the river's edge. Chinese privet and Japanese honeysuckle impact this site, particularly in the vicinity of the abandoned quarry. Nonnatives could become worse. Timber harvesting is of potential concern in an area adjacent to the population on the west side of the Cahaba River, which was selectively logged in the 1990s (Allison 1999, p. 3; Schotz 2010, pp. 34–35). Subunit 8A is 22 ha (55 ac), and subunit 8B is 11 ha (28 ac). In 2010, these two subunits together contained 299 Georgia rockcress plants. The physical or biological features essential to the conservation of the species in these subunits may require special management considerations or protection to address threats associated with road crossings, timber harvest, and nonnative species.

Unit 9A. Fern Glade, Bibb County Alabama

The 14-ha (34-ac) Fern Glade subunit is centered near the confluence of the Little Cahaba River and Sixmile Creek approximately 14.2 km (8.9 mi) northeast of Centreville, Alabama. Twelve percent of the Fern Glade subunit (4.2 ha (1.7 ac)) is owned by TNC, and 79 percent (10.9 ha (27 ac)) of this subunit is part of the Cahaba National Wildlife Refuge. A moderate incursion of invasive Chinese privet and Japanese honeysuckle occurs at this site. Nonnatives will likely become worse (Allison 1999, p. 3; Schotz 2010, p. 26). A small glade on the north side of the Little Cahaba River had 81 Georgia rockcress plants in 2010. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats associated with timber harvest and nonnative species.

Unit 9B. Sixmile Creek, Bibb County, Alabama

Privately owned, the Sixmile Creek subunit is located 13.7 km (8.5 mi) northeast of Centreville, 0.8 km (0.5 mi) upstream on Sixmile Creek from its confluence with the Little Cahaba River. The majority of this subunit (96.6 percent or 8.2 ha (20.3 ac)) was acquired by TNC in 2013. This population of

Georgia rockcress is on the west side of Sixmile Creek. In a relatively isolated site, Georgia rockcress occupies the upper slope and summit of a steep forested bluff overlooking Sixmile Creek. This 13-ha (31-ac) subunit had 59 Georgia rockcress plants in 2010. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats associated with timber harvest and nonnative species.

Unit 10A. Browns Dam Glade North and Unit 10B. Browns Dam Glade South, Bibb County, Alabama

Privately owned, the Browns Dam Glade subunits are located 15.8 km (9.8 mi) northeast of Centreville, Alabama, on both sides of the Little Cahaba River. Subunit 10A is on the north side of the river, and subunit 10B is in a sharp bend on the south side of the River. More than 96 percent of subunit 10A (13.7 ha (33.8 ac)) and all of subunit 10B are owned by TNC. A combination of open woodland and dolomitic glades characterize the site. An infestation of nonnatives, most notably Chinese privet, occurs at this unit. This site serves as a primitive recreation area for local residents, resulting in some trash disposal and the construction of fire pits (Allison 1999, p. 5; Schotz 2010, pp. 24–25). Subunits 10A and 10B are 14 ha (35 ac) and 15 ha (37 ac), respectively. A complex of dolomitic glades and associated woodlands along both sides of the Little Cahaba River contained 71 Georgia rockcress plants in 2010. The physical or biological features essential to the conservation of the species in these subunits may require special management considerations or protection to address threats associated with nonnative species.

Unit 11. McGuire Ford/Limestone Park, Bibb County, Alabama

Privately owned, the McGuire Ford/Limestone Park unit is located 18.7 km (11.6 mi) northeast of Centreville, Alabama, on the southeast side of the Little Cahaba River. A small number of plants occupy shallow soils of low, rocky limestone outcrops along the Little Cahaba River under a lightly shaded canopy of eastern red cedar, chinquapin oak, white ash, Southern sugar maple, and redbud, among others (Allison 1999, p. 5; Schotz 2010, p. 20). This 6-ha (15-ac) unit contained 50 Georgia rockcress plants during the 2010 survey. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with roads, development, and maintenance of a pasture.

Unit 12. Fort Toulouse State Park, Elmore County, Alabama

State-owned, the Fort Toulouse State Park unit is located 16 km (10 mi) north of Montgomery, Alabama, on the south side of the Coosa River. Georgia rockcress is widely scattered along the bluffs overlooking the Coosa River, primarily occupying mesic, sandy soils of upper slopes and crest. Japanese honeysuckle is beginning to severely impact many areas of the site (Allison 1999, p. 2; Schotz 2010, p. 42). This 7-ha (17-ac) unit contained 47 Georgia rockcress plants during the 2010 survey. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with maintenance of a recreational field and nonnative species.

Unit 13. Fort Gaines Bluff, Clay County, Georgia

Privately owned, the Fort Gaines Bluff unit is located 1.5 km (0.9 mi) south of Fort Gaines, Georgia, on the Chattahoochee River. This high, steep, eroding river bank has sandy loam soils and an intact hardwood overstory. Japanese honeysuckle has become severe over much of area (Allison 1995, pp. 18–29; Moffett 2007, p. 9). This 17-ha (43-ac) unit contained 84 Georgia rockcress plants in 2010. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with timber harvest and nonnative species.

Unit 14A. Goat Rock North and Unit 14B. Goat Rock South, Harris and Muscogee Counties, Georgia

Privately owned, the Goat Rock Dam is 18.5 km (11.5 mi) north of Columbus Georgia. The Goat Rock North subunit is immediately north of Goat Rock Dam on the banks of Goat Rock impoundment, while the Goat Rock South subunit is immediately downstream of Goat Rock Dam along the high bluffs overlooking the Chattahoochee River. All of Goat Rock North subunit and the majority of the Goat Rock South subunit are owned by a corporation that supports conservation efforts for Georgia rockcress. The corporately owned property is provided modest protection in the shoreline management plan, which was developed during Federal Energy Regulatory Commission (FERC) licensing (FERC 2004, pp. 29–30). However, the southernmost portion of the Goat Rock South subunit is privately owned. This high rocky bluff is mostly covered by a mature canopy of trees. A narrow portion of this habitat has a transmission line passing over the top where all woody species have been removed; however, Georgia rockcress plants are scattered in the transmission line right-of-way. This area contains PCEs 1 and 2; therefore, it is included in the final designation. Nonnative species, including Chinese privet and Japanese honeysuckle, have severely impacted this site (Allison 1995, pp. 24–27; Moffett 2007, pp. 6–9). Conservation actions here have included invasive species/woody competition removal (both manually and chemically) to benefit existing Georgia rockcress plants, and prescribed burning to open up new adjacent sites for outplanting enhancement. The Chattahoochee Nature Center (CNC) outplanted approximately 300 Georgia rockcress plants of the Goat Rock genotype at this site in 2008. The local office of TNC has also expressed interest in possibly including this site in their long-range ecosystem planning (Elmore 2010, pp. 1–3). Subunits 14A and 14B are 7 ha (19 ac) and 24 ha (59 ac), respectively, and contain two or more of the PCEs throughout the subunits. In 2007, approximately 1,000 Georgia rockcress plants were found scattered across these subunits. The physical or biological features essential to the conservation of the species in these subunits may require special management considerations or protection to address threats associated with hydropower, utility line maintenance, and nonnative species.

Unit 15. Blacks Bluff Preserve, Floyd County, Georgia

Privately owned, the 37-ha (92-ac) Blacks Bluff Preserve unit is located 6.5 km (4.0 mi) southwest of Rome, Georgia, on the Coosa River. Blacks Bluff is in private ownership with a conservation easement on the property. There were 27 Georgia rockcress plants reported on this site in 1995; however, the presence of nonnative species has since extirpated all Georgia rockcress from this site. The Georgia Plant Conservation Alliance (GPCA) and TNC agreed to bolster the existing population with plants grown from seed collected at the two nearby (Ridge and Valley physiographic province) populations, Whitmore Bluff, and Resaca Bluffs. The CNC collected seed and grew 35 plants from Whitmore Bluff and 65 plants from Resaca Bluffs. In 2008, 100 Georgia rockcress plants were planted in this unit, with 84 Georgia rockcress

surveyed on this site in 2011 (Goldstrohm 2011, p. 1). This steep bluff with limestone ledges and boulders has a mature deciduous canopy. Multiple sources of disturbance, including an abandoned quarry, have impacted this site and resulted in the establishment of many nonnative species, including Japanese honeysuckle and Nepalese browntop (Allison 1995, pp. 19–20; Moffett 2007, pp. 5–9; Elmore 2010, pp. 1–3). The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with roads, mining, and nonnative species.

Unit 16. Whitmore Bluff, Floyd County, Georgia

Privately owned, the Whitmore Bluff unit is located 6.5 km (4 mi) northeast of Rome, Georgia, on the east bank of the Oostanaula River. This steep bluff with limestone boulders has a mature canopy with *Ulmus alata* (winged elm), *Quercus montana* (chestnut oak), and *Fraxinus americana* (white ash), and an understory including *Hydrangea arborescens* (wild hydrangea), *Toxicodendron radicans* (poison ivy), and *Sedum ternatum* (woodland stonecrop). Japanese honeysuckle has severely impacted this site (Allison 1995, p. 21; Moffett 2007, pp. 6–9; Elmore 2010, pp. 1–3). This 17-ha (43-ac) unit contained 63 Georgia rockcress plants in 1995, but only 12 in 2010. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with timber harvest and nonnative species.

Unit 17. Resaca Bluffs, Gordon County, Georgia

Privately owned, the Resaca Bluffs unit is located 0.8 km (0.5 mi) southwest of Resaca, Georgia, immediately east of I–75 along the northern bank of the Oostanaula River. This unit includes a rocky limestone bluff with a mature canopy, including eastern red cedar, *Quercus nigra* (water oak), *Quercus velutina* (black oak), winged elm, white ash, southern sugar maple, and redbud. Nonnative species, including Chinese privet and Japanese honeysuckle, have severely impacted this site (Allison 1995, pp. 22–23; Moffett 2007, pp. 5–9; Elmore 2010, pp. 1–3). This 5-ha (13-ac) unit contained 51 plants in 1995, and 42 in 2010. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with road crossings, development, and nonnative species.

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,* 245 F.3d 434 (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 provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally-funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether,

with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for Georgia rockcress. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Georgia rockcress. These activities include, but are not limited to:

(1) Actions that would significantly alter the canopy. Such activities could include, but are not limited to, silvicultural management, construction of utility lines, creation of pasture or maintained lawn, construction of buildings, and construction of roads or bridges. Invasive species should be precluded from the critical habitat units. A mature canopy on the bluffs and a surrounding buffer area will help to preclude nonnative and invasive species. Activities that alter the canopy could alter the natural canopy gap dynamic that provides Georgia rockcress a competitive advantage and result in direct or cumulative adverse effects to these individuals and their life cycles.

(2) Actions that would inundate habitat. Construction of a dam downstream of a critical habitat unit could result in the loss of habitat. These activities could alter the functioning bluff habitat and result in direct or cumulative adverse effects to these individuals and their life cycles.

(3) Actions that would significantly alter the soil. Such activities could include, but are not limited to, construction of roads or bridges, construction of buildings (e.g., dams, residential housing, or commercial buildings), and mining activities. These activities would permanently alter the soil that Georgia rockcress is dependent on to complete its life cycle.

Exemptions

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) requires 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 geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan 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 proposed critical habitat designation for Georgia rockcress to determine if the lands are exempt under section 4(a)(3) of the Act.

In 2001, Fort Benning completed its Service-approved INRMP. The installation has revised its INRMP to include specific measures for the Georgia rockcress and its habitat, including monitoring and management for the Georgia rockcress including: Management of feral swine, limiting timber harvest within 200 feet of Georgia rockcress populations, monitoring of known Georgia rockcress populations and surveys for new populations, and monitoring and control of invasive species. The revised INRMP became effective August 2014. In accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the lands within Fort Benning that were originally proposed for critical habitat are subject to the Fort Benning INRMP and that conservation efforts identified in the INRMP will provide a benefit to Georgia rockcress. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 25 ha (61 ac) of habitat in this final critical habitat designation because of this exemption. As described in the proposed critical habitat rule, these lands are located in Chattahoochee County, Georgia, and Russell County, Alabama, south of Columbus, Georgia, on the Chattahoochee River near its confluence with Oswichee Creek and across from its confluence with Red Mill Creek.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless 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.

Consideration of Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which together with our narrative and interpretation of effects we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (U.S. Fish and Wildlife Service 2013; Industrial Economics, Inc. 2014). The analysis, dated April 8, 2014, was made available for public review from May 29,

2014, through June 9, 2014, and a summary of the findings were provided on *http://www.regulations.gov* from May 9, 2014, to June 9, 2014 (79 FR 26679). The DEA addressed potential economic impacts of critical habitat designation for Georgia rockcress. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Georgia rockcress is summarized below and available in the screening analysis for the Georgia rockcress, available at *http://www.regulations.gov*.

In our DEA, we concluded that section 7-related costs of designating critical habitat for the Georgia rockcress are likely to be limited to additional administrative effort to consider possible adverse effects to critical habitat during consultation. This finding is based on several factors, including:

1. Project modifications requested to avoid adverse modification are likely to be the same as those needed to avoid jeopardy in occupied habitat; and

2. All units are considered occupied by the plant, providing significant baseline protection.

The number of future consultations is expected to be at most five in a given year. Unit costs of the administrative effort necessary to address adverse modification of critical habitat during section 7 consultation is estimated to range from approximately $400 to $9,000 (2014 dollars, total incremental costs for all parties participating in a single consultation). Thus, the annual administrative burden due solely to the critical habitat designation is unlikely to reach $100 million. Given the estimates in the screening analysis for the Georgia rockcress, predictions are that costs are unlikely to exceed $45,000 in a given year (2014 dollars). This is essentially the upper end of the cost for section 7 consultations and is the cost attributable to just the critical habitat.

In other words, the incremental administrative burden resulting from the designation of critical habitat for the Georgia rockcress is unlikely to reach $100 million in a given year based on the small number of anticipated consultations and per-consultation costs. Furthermore, the designation is unlikely to trigger additional requirements under State or local regulations.

Exclusions Based on Economic Impacts

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Georgia rockcress based on economic impacts.

A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Georgia Ecological Services Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov*.

Exclusions Based on National Security Impacts or Homeland 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 Georgia rockcress. We have also determined that the remaining lands within the designation of critical habitat for the species are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security or homeland security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any habitat conservation plans (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 for the Georgia rockcress, and the final designation does not include any tribal lands or trust resources, and so we anticipate no impact on tribal lands, partnerships, or HCPs from this critical habitat designation. Accordingly, the Secretary is not exercising her discretion to exclude any areas from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (SBREFA; 5 U.S.C 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e. small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations, such as

independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation, as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firms' business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and, therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

We did not receive any substantive comments pertaining to our consideration of the probable incremental economic impacts of this critical habitat designation. Therefore, we affirm our certification that this designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 (E.O. 13211; ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 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 draft economic analysis, energy-related impacts associated with Georgia rockcress conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments. The government-owned lands being designated as critical habitat are owned by the State of Alabama and the Department of the Interior. None of these government entities meets the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical

habitat for Georgia rockcress in a takings implications assessment. The economic cost of implementing the rule through section 7 of the Act will most likely be limited to additional administrative effort to consider adverse modification during consultations. According to a review of consultation records and discussions with multiple Service field offices, the additional administrative cost of addressing adverse modification during the section 7 consultation process ranges from approximately $400 to $9,000 per consultation (2014 dollars). Based on the project activity identified by relevant action agencies, the number of future consultations is likely to be less than five consultations per year. Thus, the incremental administrative burden resulting from the rule is unlikely to reach $100 million in a given year, and given the economic analysis we have determined that there are no additional takings implications. The takings implications assessment concludes that this designation of critical habitat for Georgia rockcress does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Alabama and Georgia. We are not designating any unoccupied areas. The designation of critical habitat in areas currently occupied by the Georgia rockcress will impose no additional restrictions to those that will be put in place by listing the species and, therefore, will have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. 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 Georgia rockcress. 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, in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribal lands that are occupied by Georgia rockcress at the time of listing that contain the features essential for conservation of the species. Therefore, we are not designating critical habitat for the Georgia rockcress on tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2013–0030 and upon request from the Field Supervisor, Ecological Services Office in Athens, Georgia (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rulemaking are the staff members of the Ecological Services Office in Athens, Georgia.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.96, amend paragraph (a) by adding an entry for ''*Arabis georgiana* (Georgia rockcress)'' in alphabetical order under Family Brassicaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Brassicaceae: *Arabis georgiana* (Georgia Rockcress)

(1) Critical habitat units are depicted in Georgia, including Clay, Gordon, Floyd, Harris, and Muscogee Counties, and in Alabama, including Bibb, Dallas, Elmore, Monroe, Sumter, and Wilcox Counties, on the maps in this entry.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Arabis georgiana* (Georgia rockcress) consist of four components:

(i) Large river bluffs with steep and/or shallow soils that are subject to localized disturbances that limit the accumulation of leaf litter and competition within the Lower Gulf Coastal Plain, Upper Gulf Coastal Plain, Red Hills, Black Belt, Piedmont, and Ridge and Valley Physiographic Provinces of Georgia and Alabama.

(ii) Well-drained soils that are buffered or circumneutral generally within regions underlain or otherwise influenced by granite, sandstone, or limestone.

(iii) A mature, mixed-level canopy with spatial heterogeneity, providing mottled shade and often including species such as *Juniperus virginiana* (eastern red cedar), *Ostrya virginiana* (American hophornbeam), *Quercus muehlenbergii (*chinquapin oak), *Fraxinus americana* (white ash), *Acer barbatum* (southern sugar maple), and *Cercis canadensis* (eastern redbud) with a rich diversity of grasses and forbs characterizing the herb layer.

(iv) Intact habitat that is fully functional (i.e., with mature canopy and discrete disturbances) and buffered by surrounding habitat to impede the invasion of competitors.

(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 October 14, 2014.

(4) *Critical habitat map units.* Data layers defining critical habitat map units were created using GIS shapefiles of Natural Heritage Element Occurrence (EO) data for *Arabis georgiana* (Georgia rockcress) locations that were provided by the Alabama Department of Conservation and Natural Resources and the Georgia Department of Natural Resources, and 1-meter resolution National Agricultural Imagery Program (NAIP) images from 2009. Each EO feature was buffered by 76 meters (m) (250 feet (ft)) up and down slope and 304.8 m (1,000 ft) laterally. The 76-m (250-ft) buffer was used as a guideline for delineating critical habitat upslope and downslope of the EO feature, with the downslope direction extending 76 m (250 ft) or to the edge of the water, whichever was shorter. The 304.8-m (1,000-ft) buffer was used a guideline for delineating critical habitat adjacent to the EO features along the length of the river. The critical habitat polygons were manually drawn using a mouse on a computer screen by visually checking for PCEs within the buffer areas against 2009 NAIP imagery. The critical habitat polygons were then viewed over the ArcGIS basemap Bing Aerial Imagery as an additional assessment tool for the placement of the critical habitat polygon boundaries. Critical habitat units were mapped using Universal Transverse Mercator (UTM), zone 16N. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site at *http://www.fws.gov/athens/,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0030, and at the Ecological Services Office in Athens, Georgia. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index maps of critical habitat units for *Arabis georgiana* (Georgia rockcress) follow:

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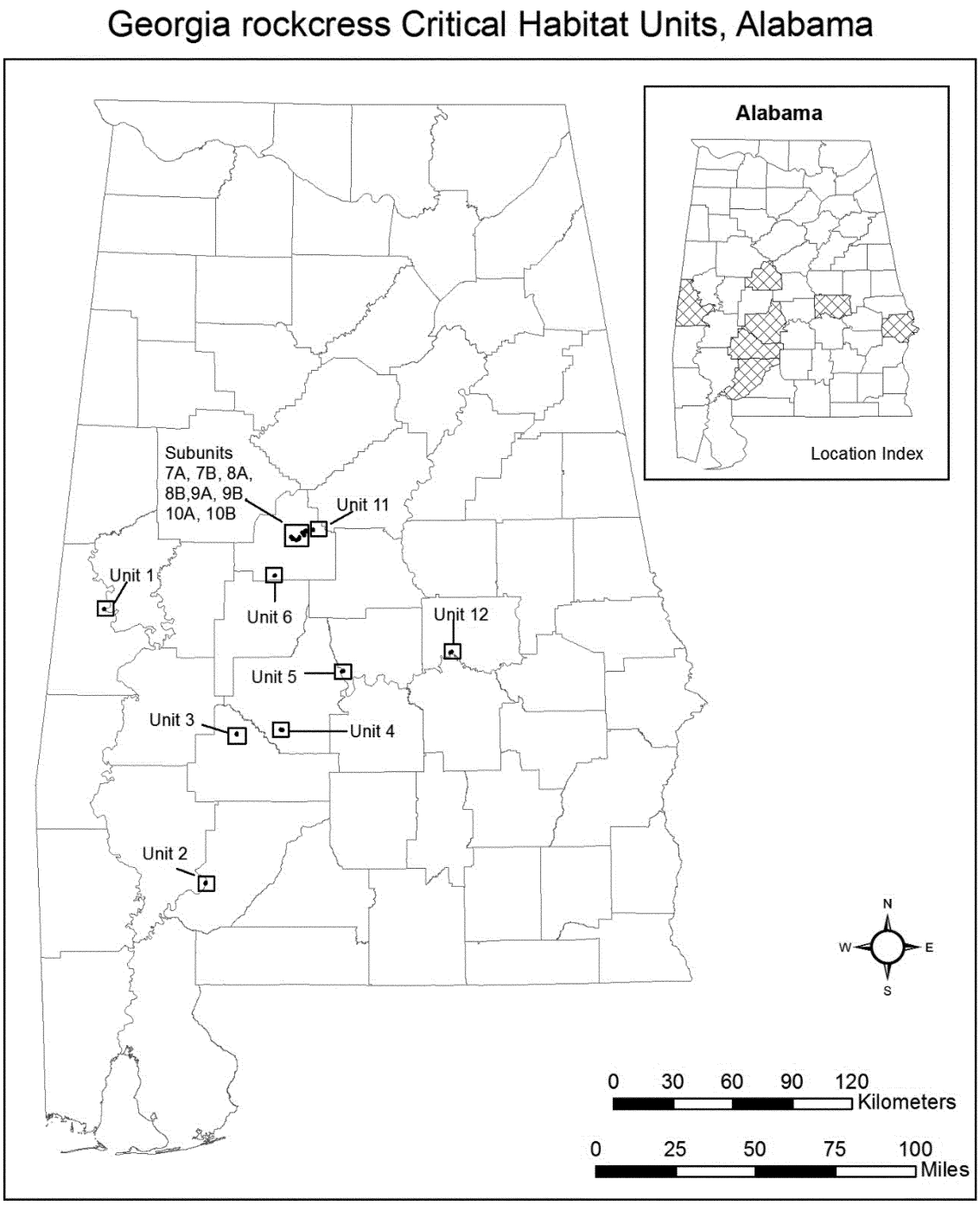
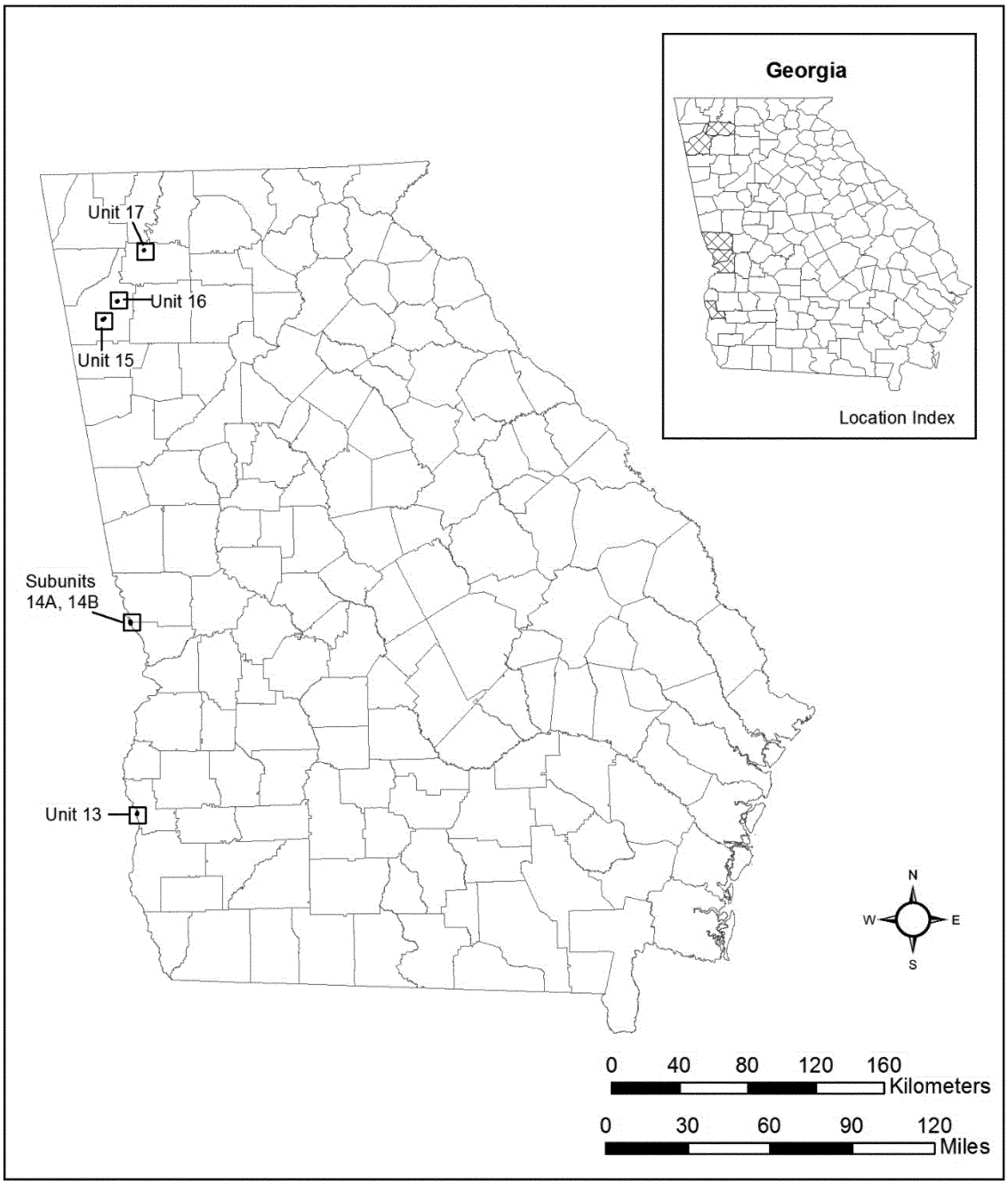
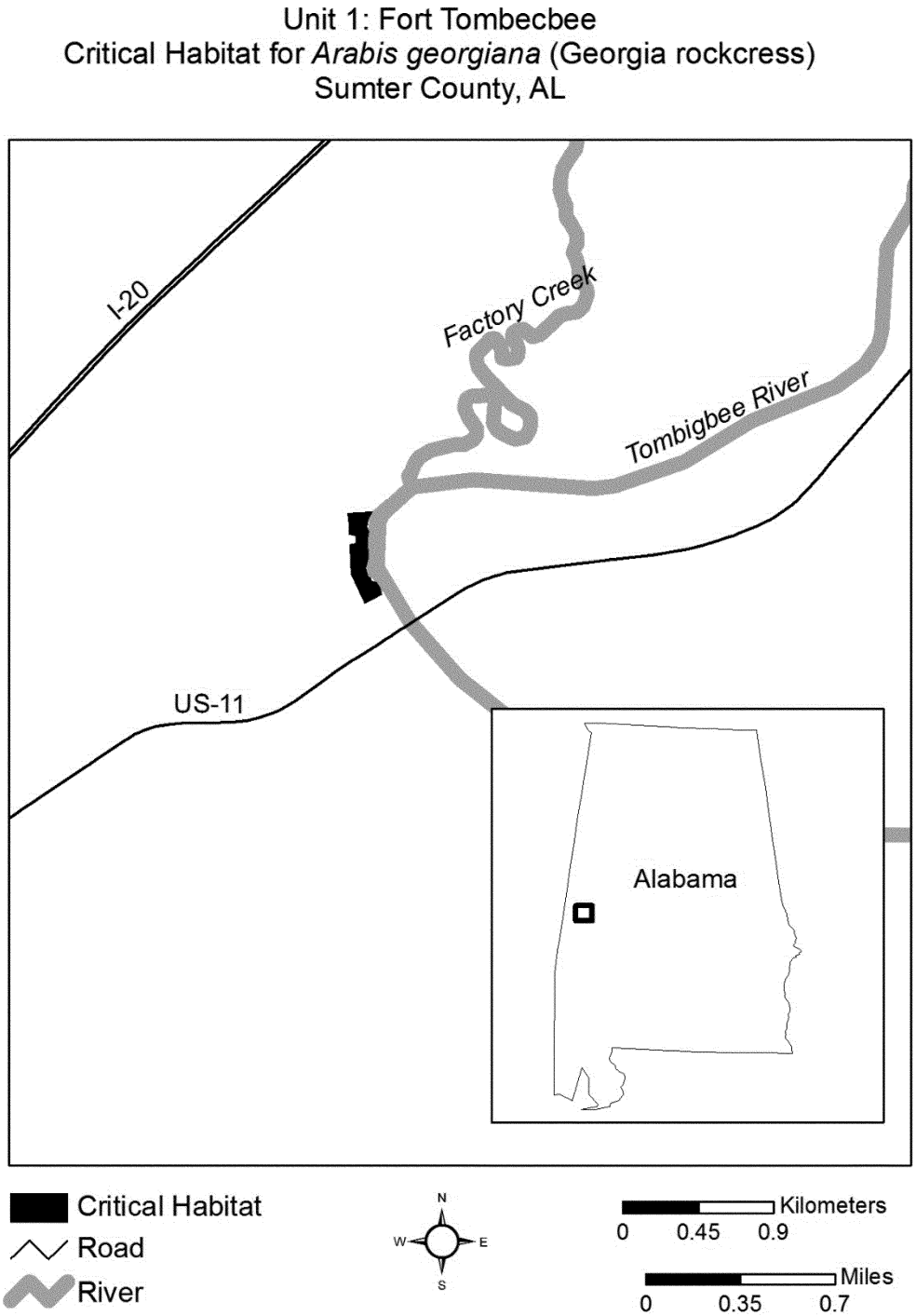


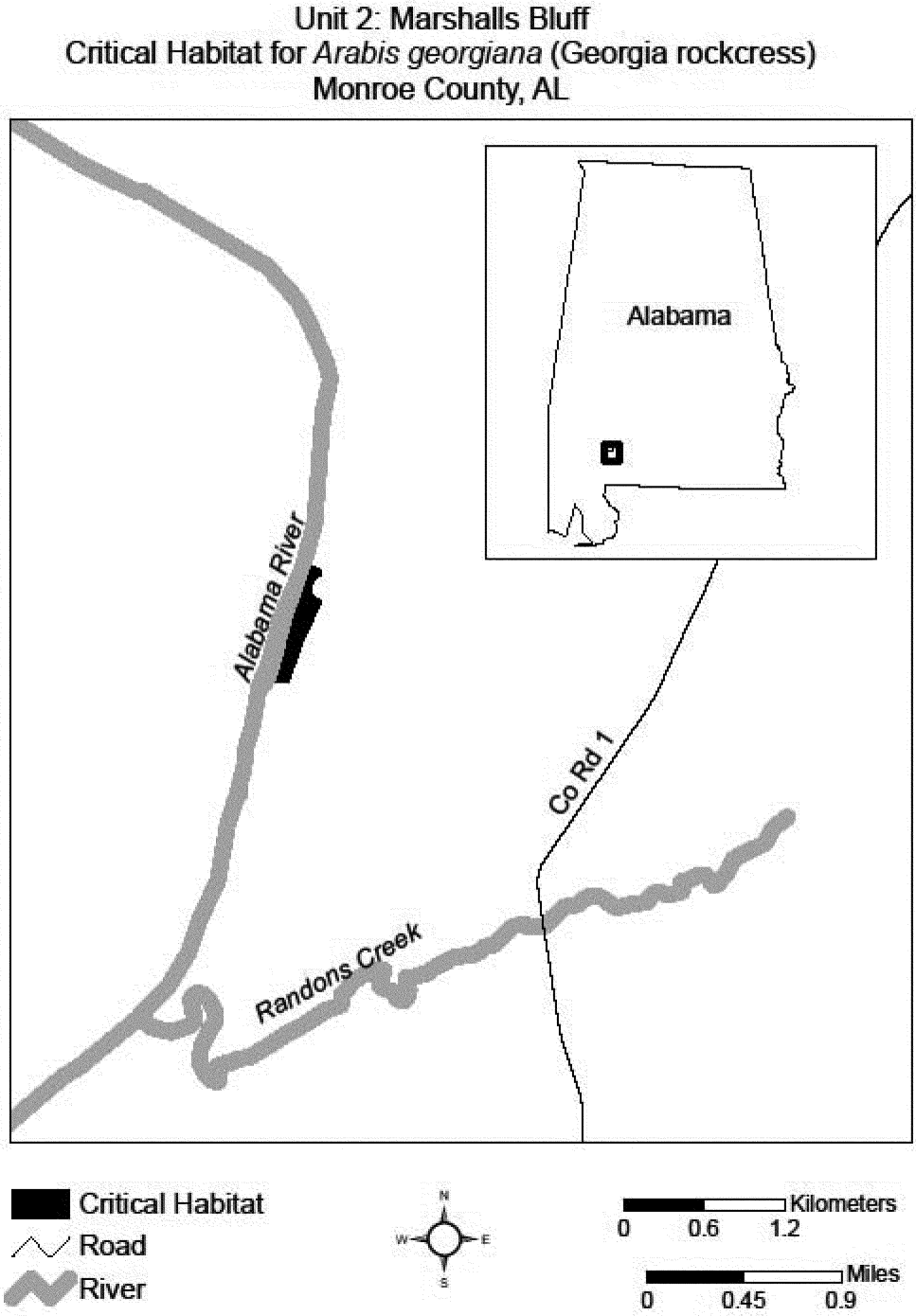
Georgia rockcress Critical Habitat Units, Georgia



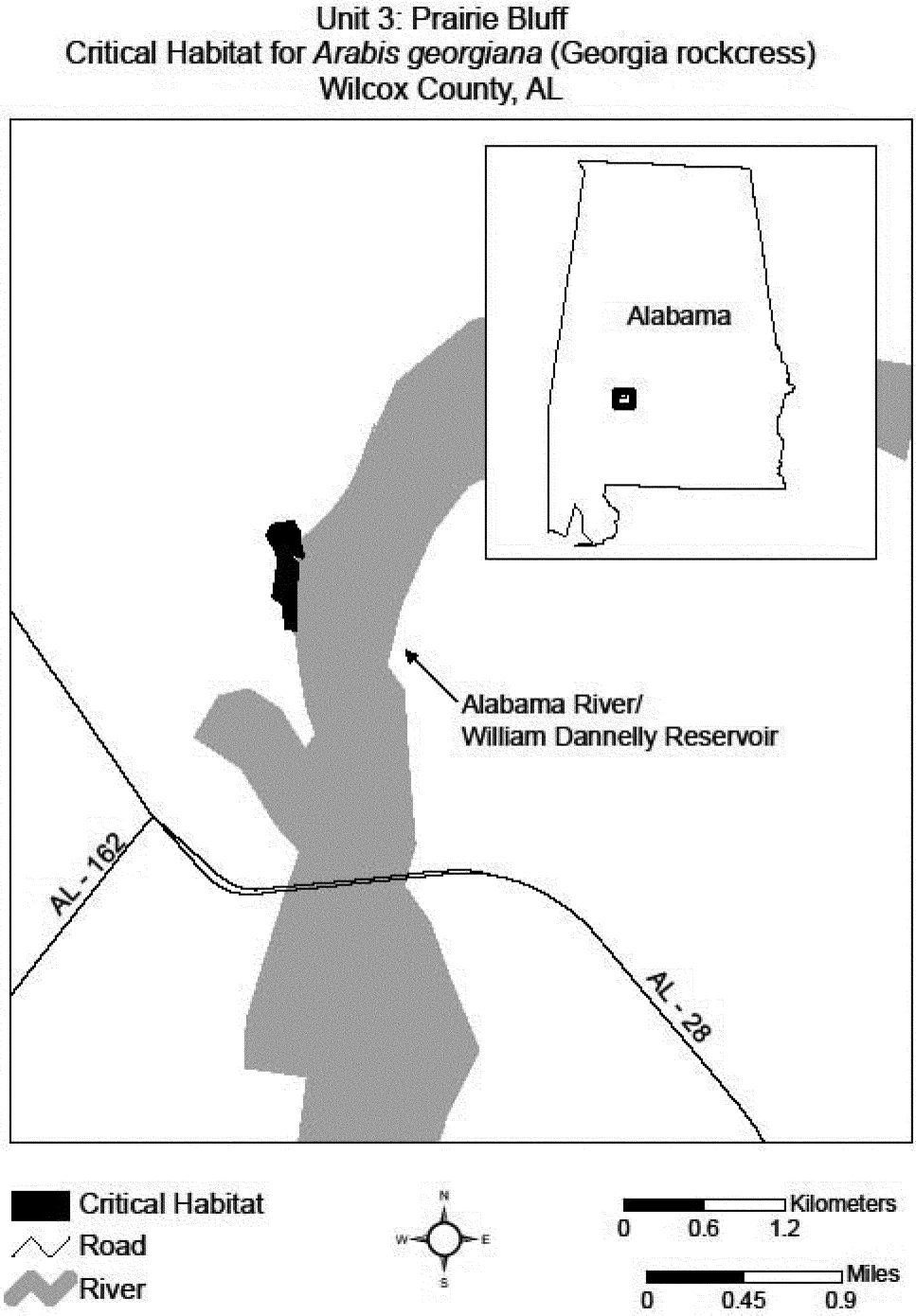
(6) Unit 1: Fort Tombecbee, Sumter County, Alabama. Map of Unit 1 follows:



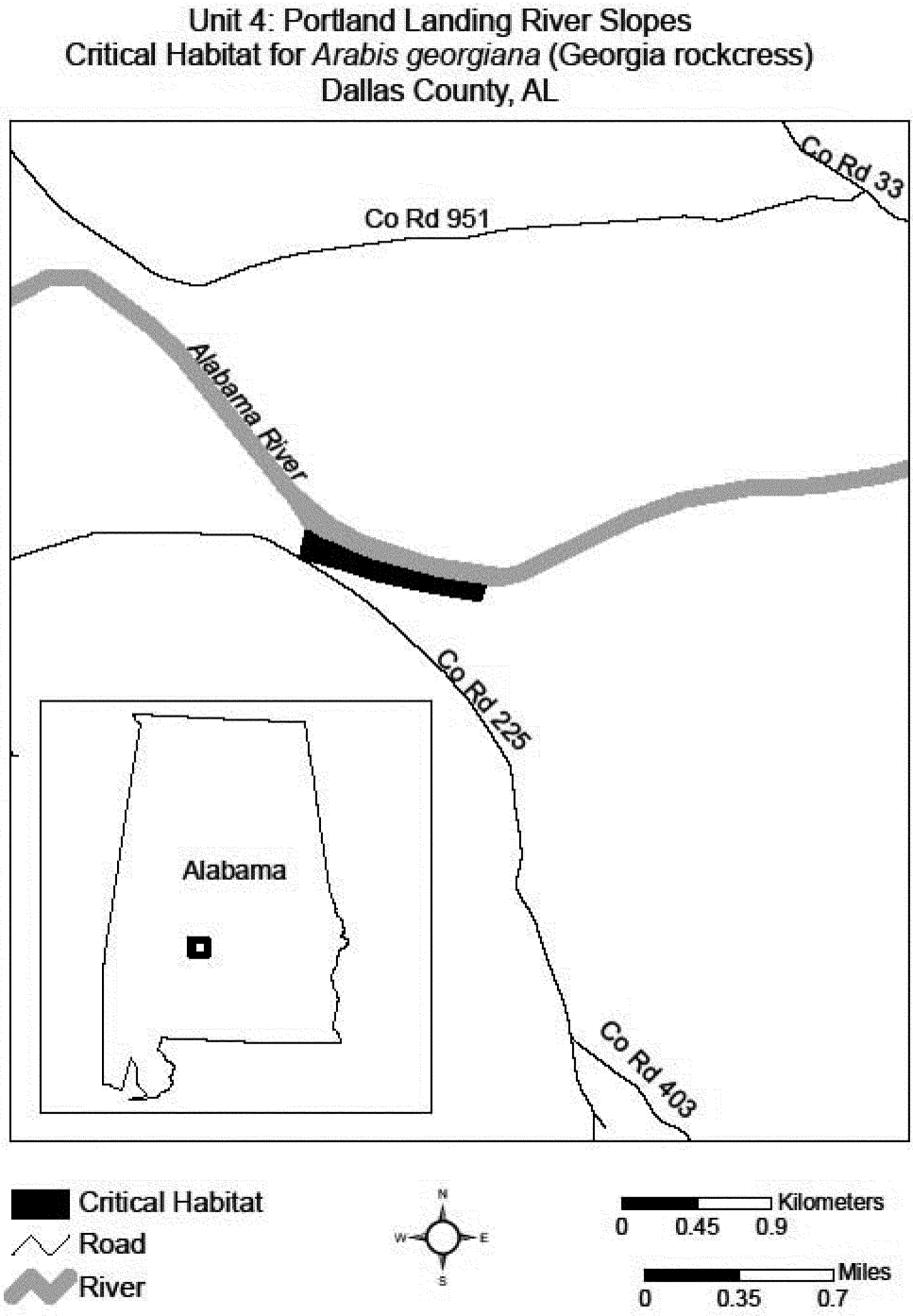
(7) Unit 2: Marshalls Bluff, Monroe County, Alabama. Map of Unit 2 follows:



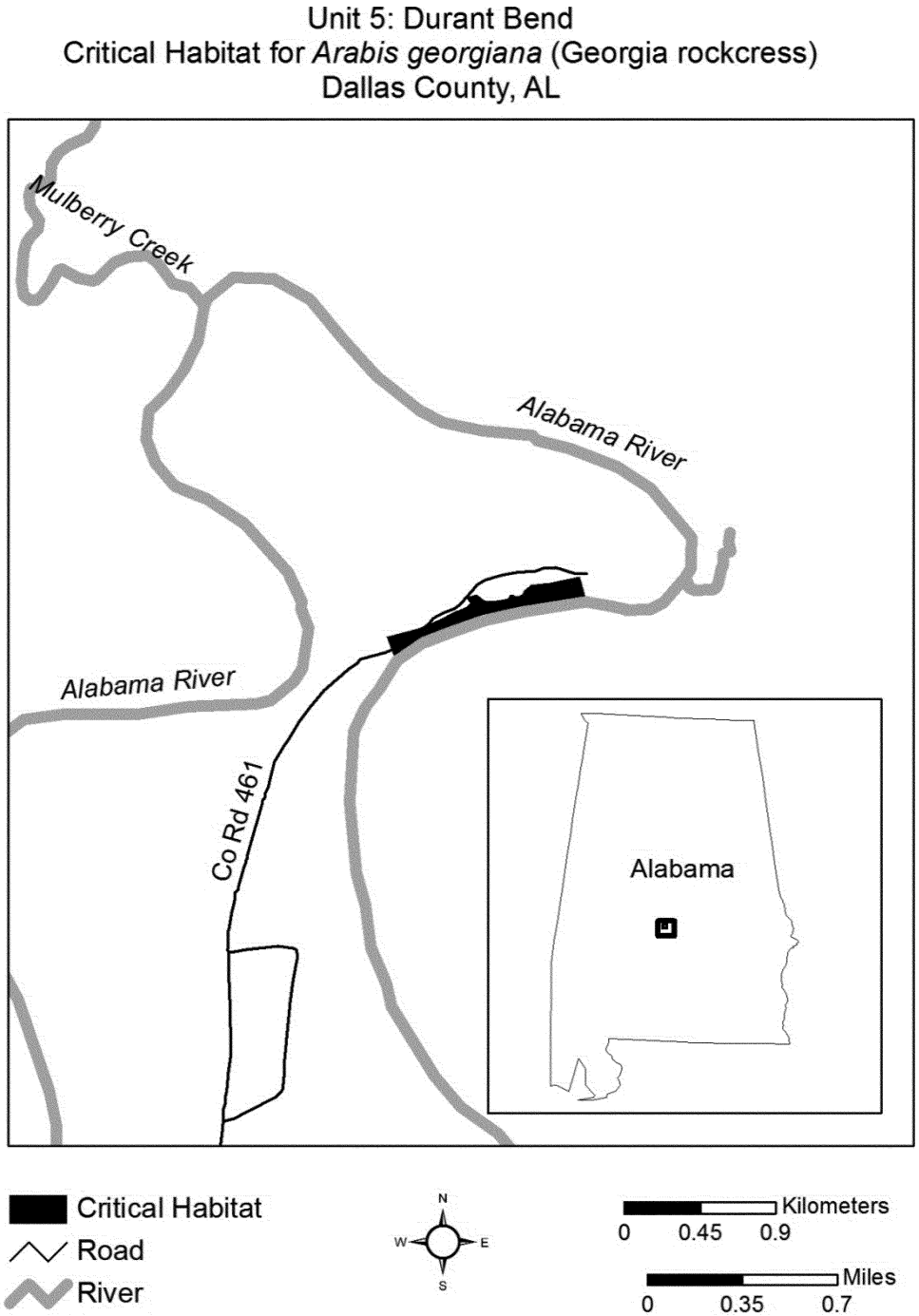
(8) Unit 3: Prairie Bluff, Wilcox County, Alabama. Map of Unit 3 follows:



(9) Unit 4: Portland Landing River Slopes, Dallas County, Alabama. Map of Unit 4 follows:

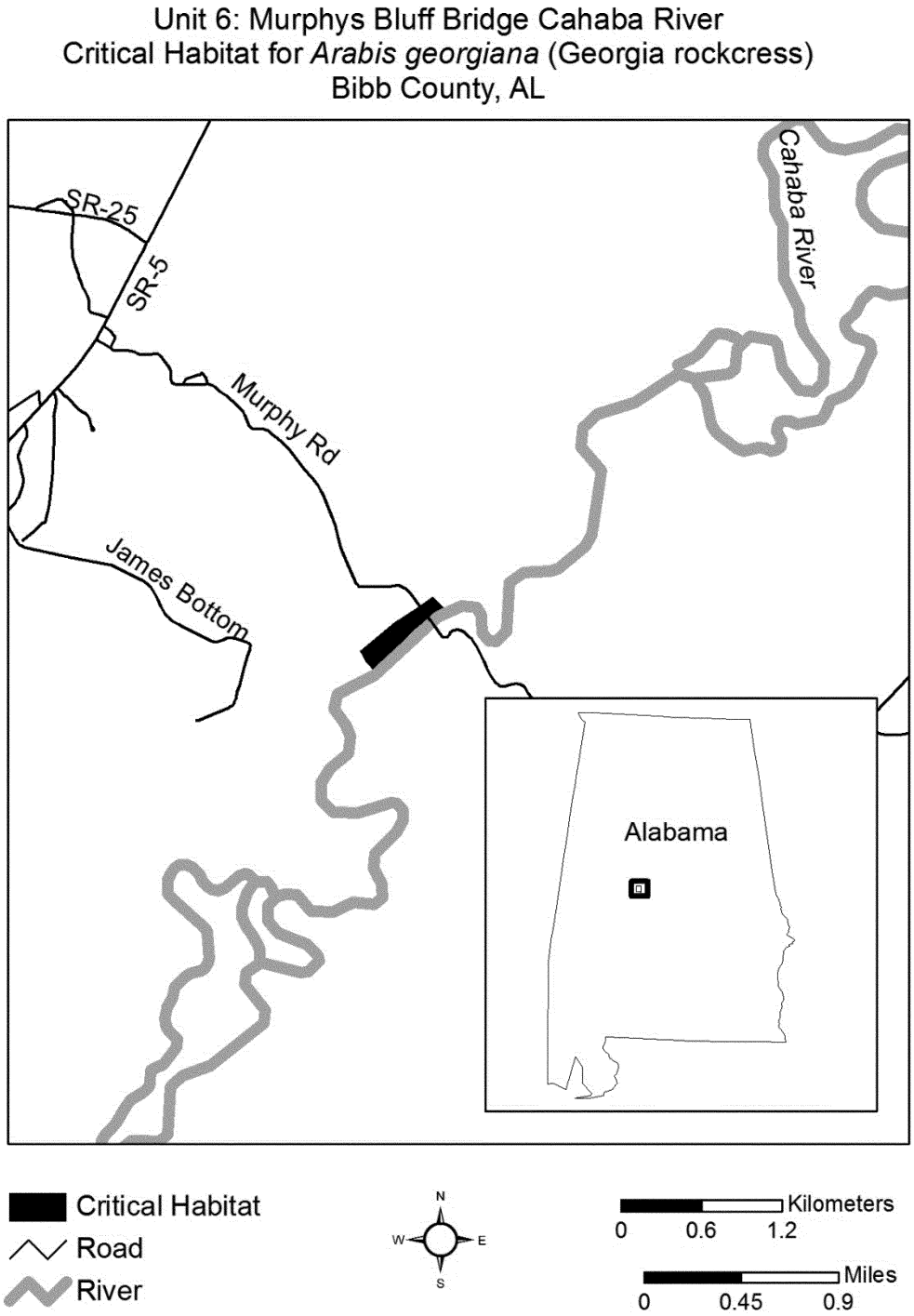


(10) Unit 5: Durant Bend, Dallas County, Alabama. Map of Unit 5 follows:

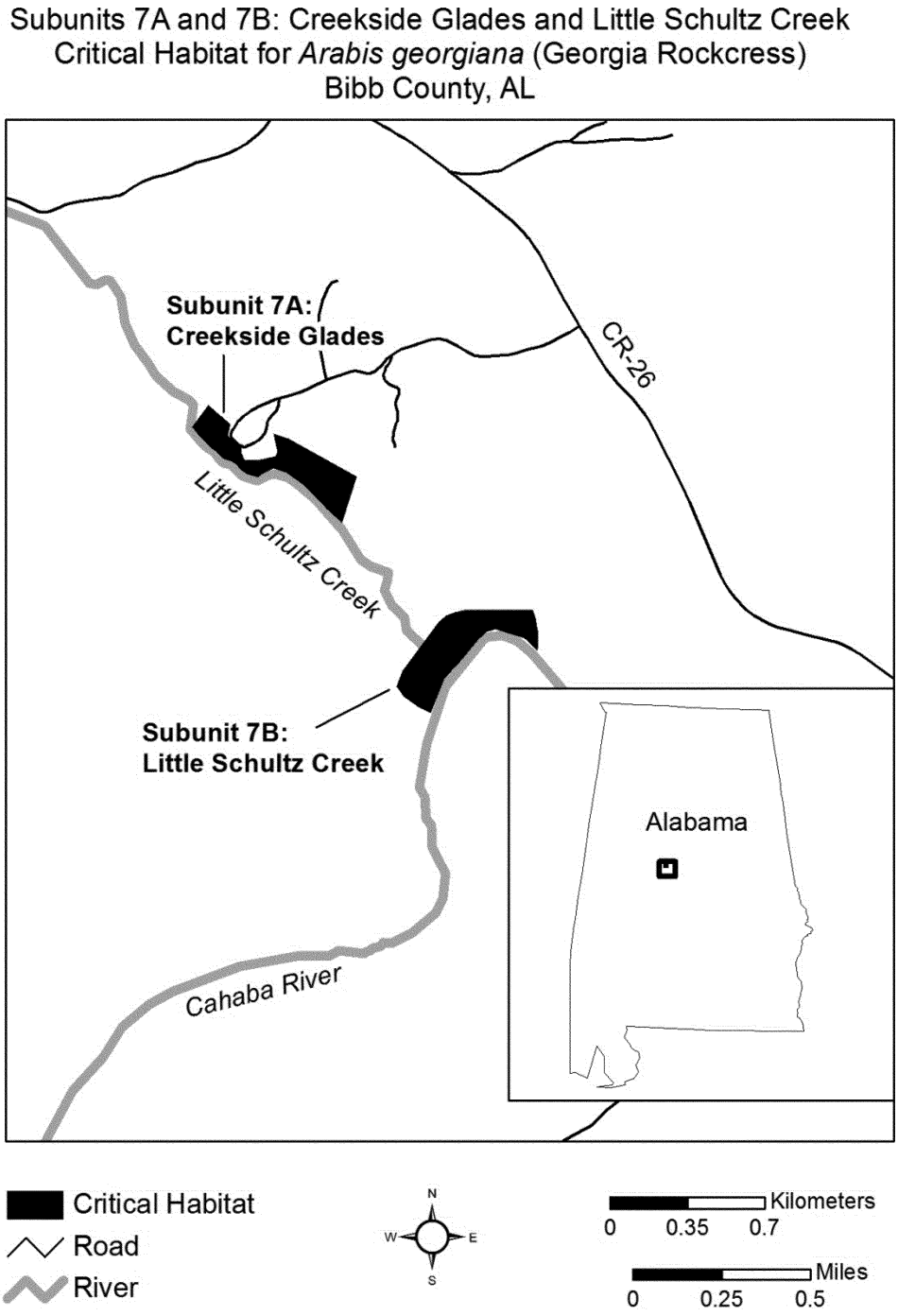


(11) Unit 6: Murphys Bluff Bridge Cahaba River, Bibb County, Alabama.

Map of Unit 6 follows:



(12) Unit 7: Bibb County, Alabama.
(i) Subunit 7A: Creekside Glades.
(ii) Subunit 7B: Little Schultz Creek.
(iii) Map of Subunits 7A and 7B follows:

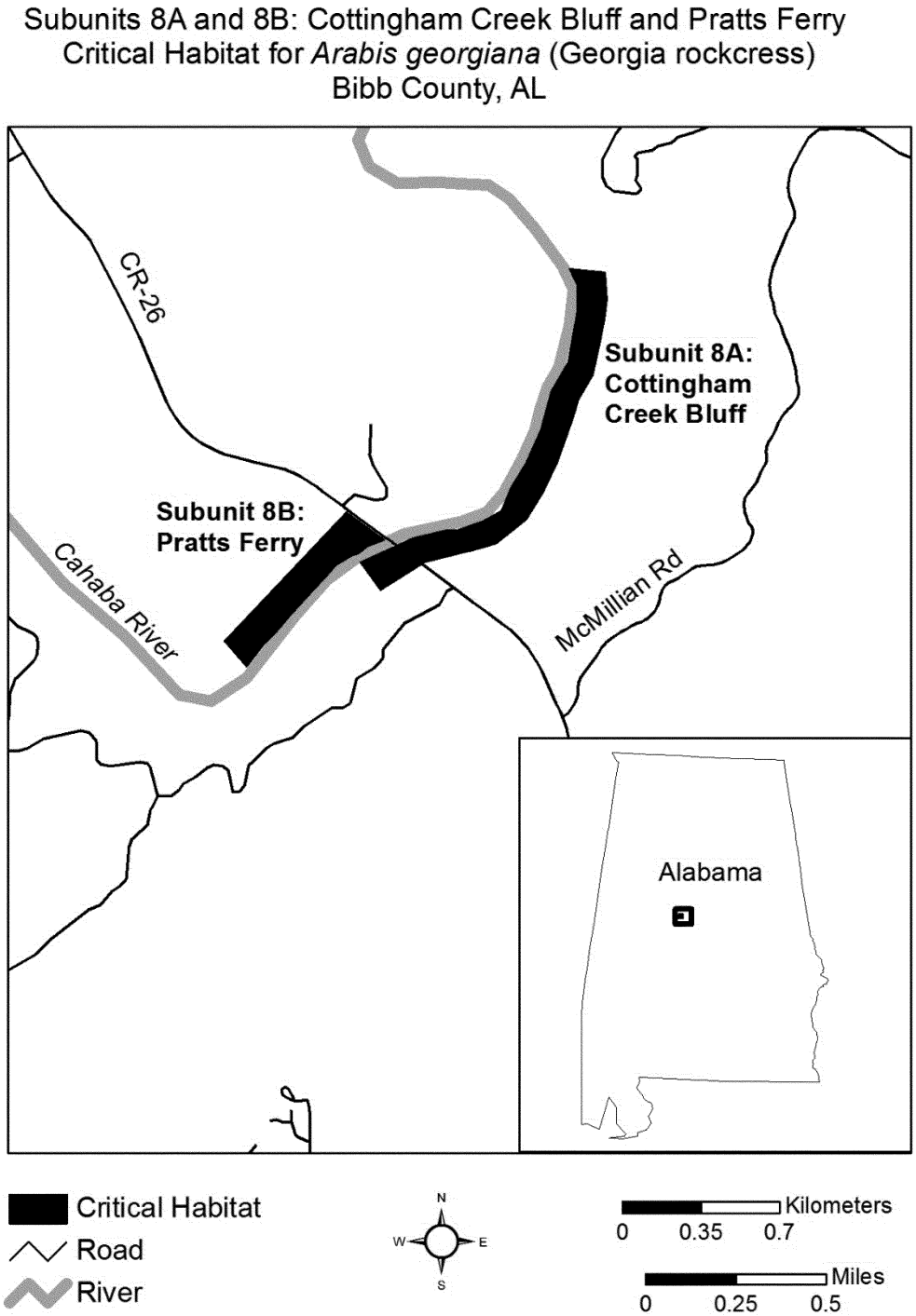


(13) Unit 8: Bibb County, Alabama.

(i) Subunit 8A: Cottingham Creek Bluff.

(ii) Subunit 8B: Pratts Ferry.

(iii) Map of Subunits 8A and 8B follows:

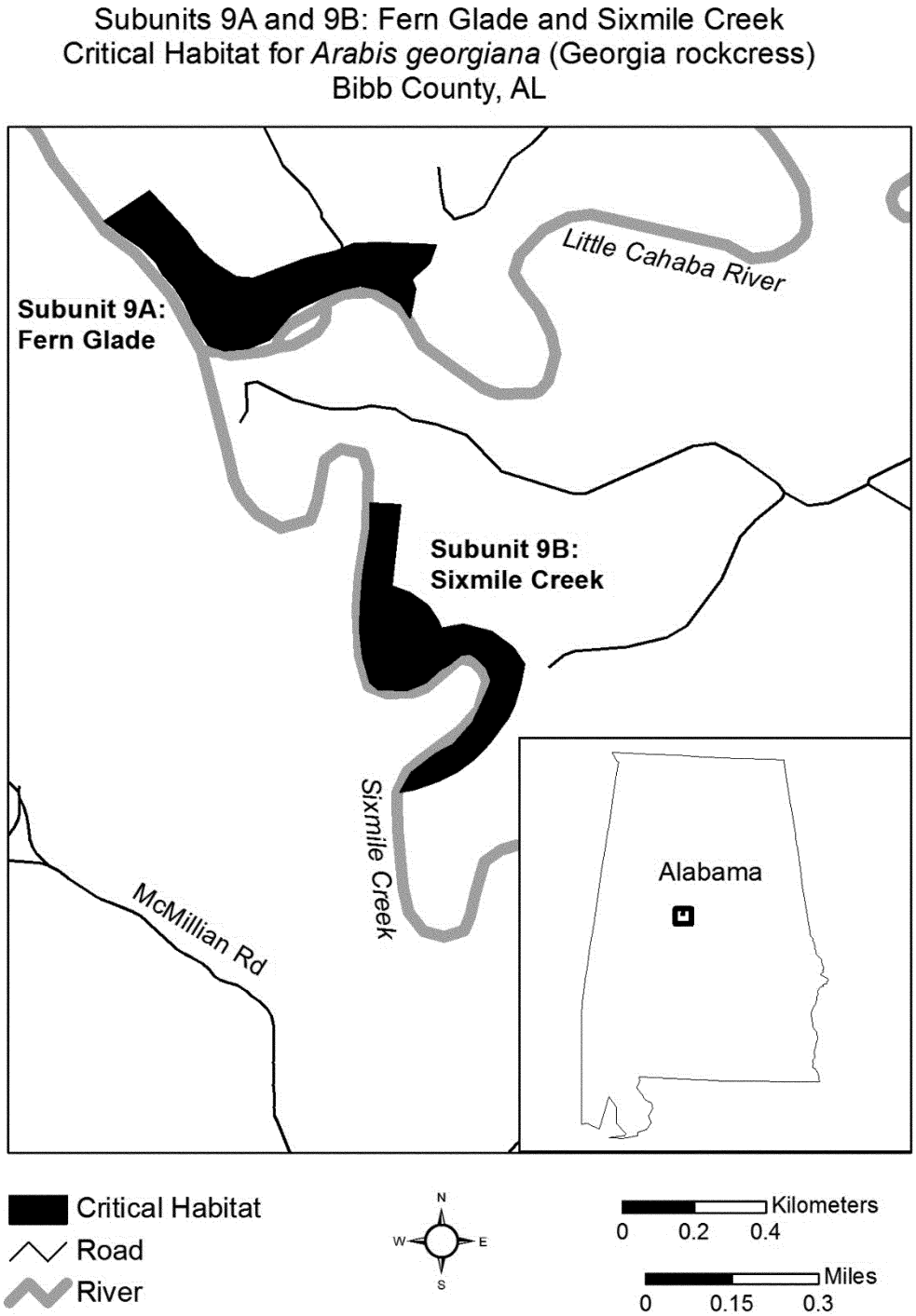


(14) Unit 9: Bibb County, Alabama.

(i) Subunit 9A: Fern Glade.

(ii) Subunit 9B: Sixmile Creek.

(iii) Map of Subunits 9A and 9B follows:



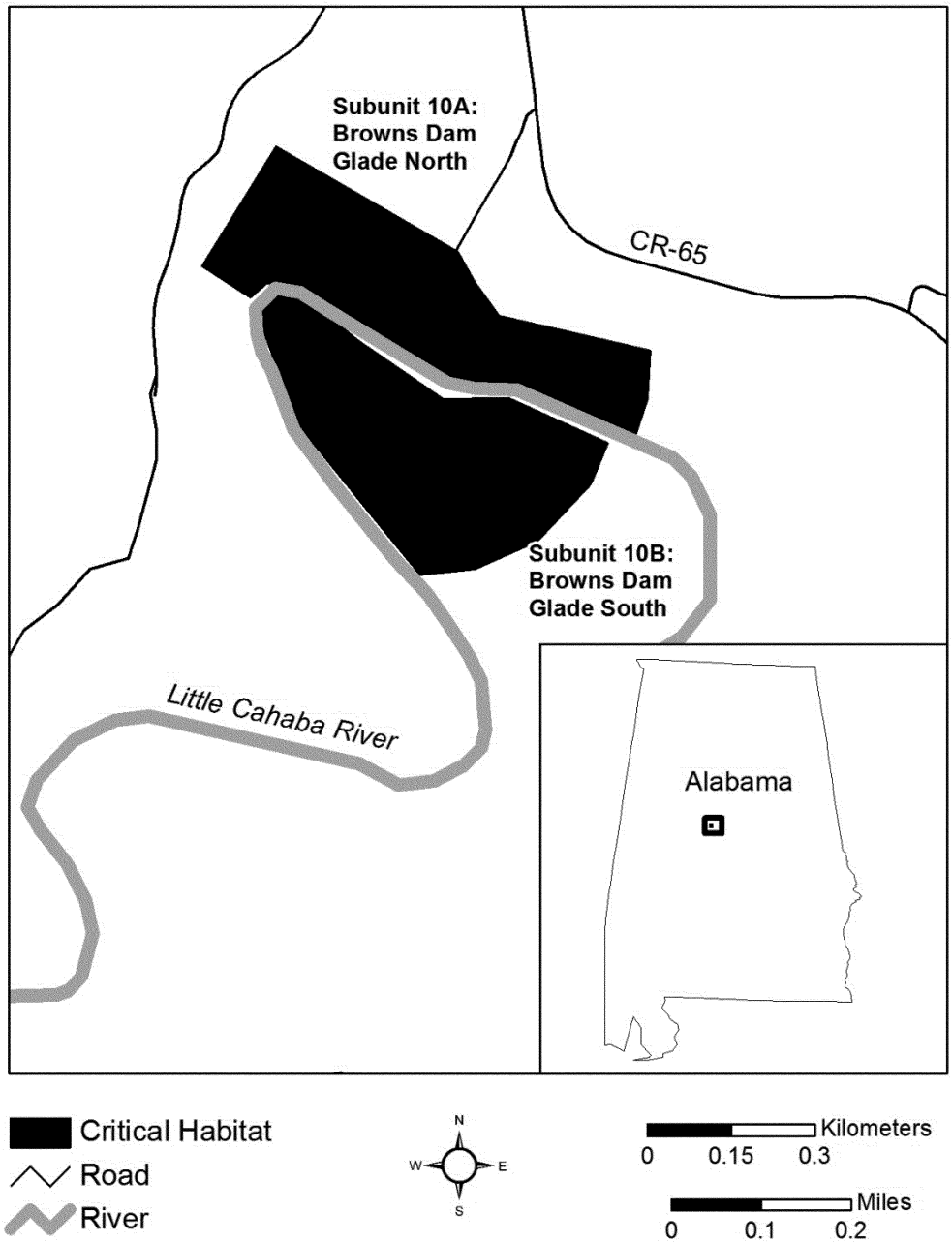
(15) Unit 10: Bibb County, Alabama.

(i) Subunit 10A: Browns Dam Glade North.

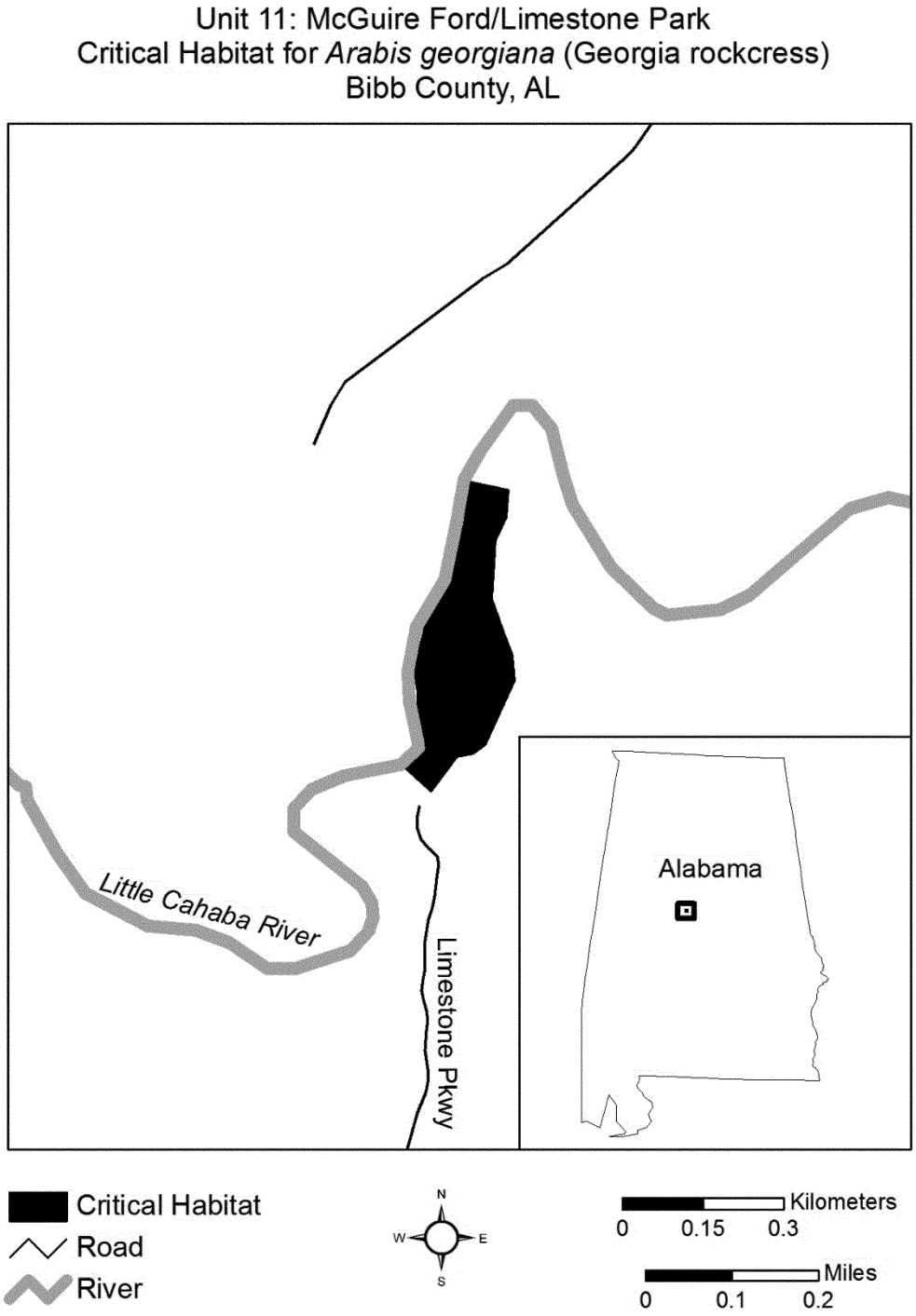
(ii) Subunit 10B: Browns Dam Glade South.

(iii) Map of Subunits 10A and 10B follows:

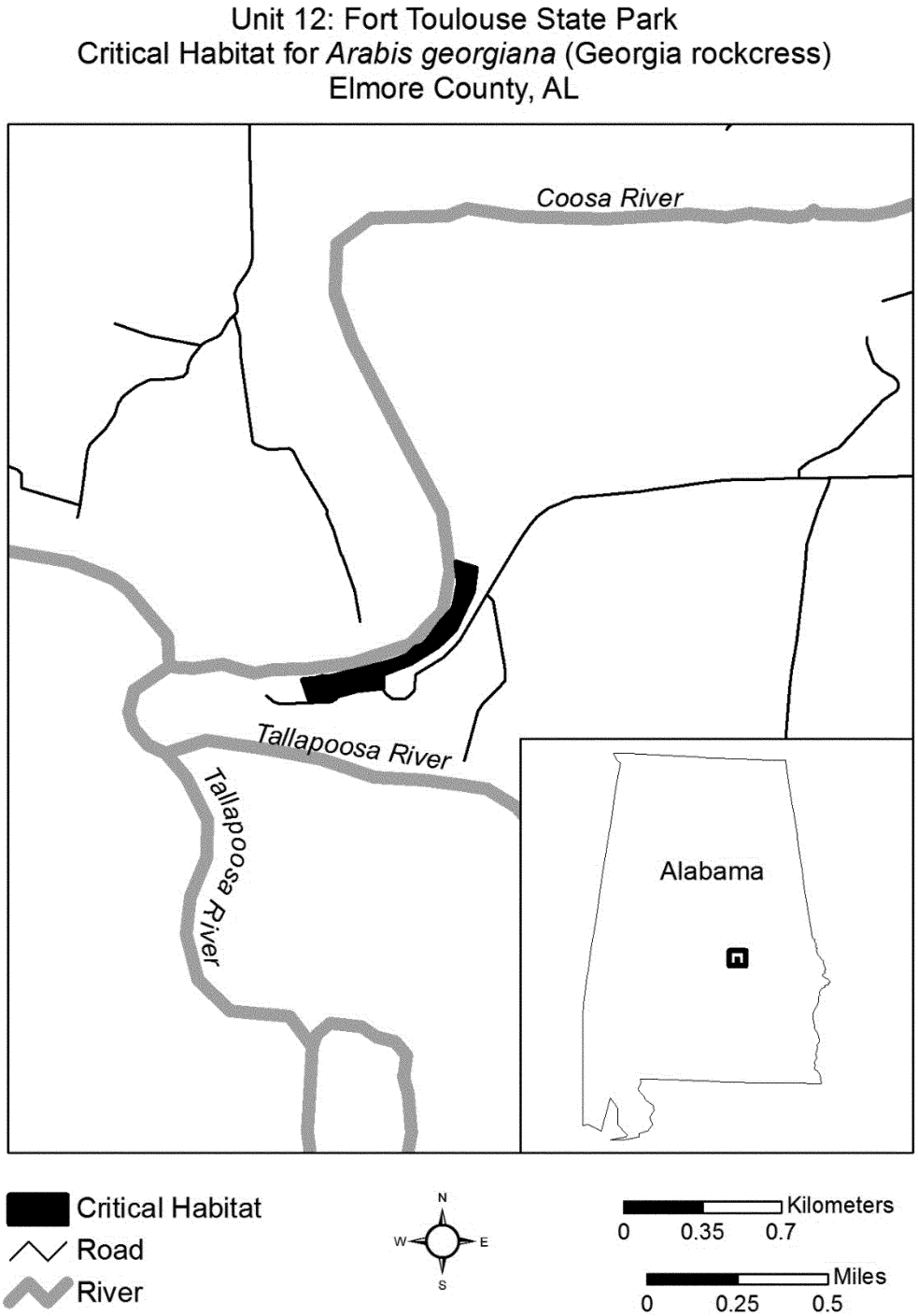
Subunits 10A and 10B: Browns Dam Glade North and Browns Dam Glade South
Critical Habitat for *Arabis georgiana* (Georgia rockcress)
Bibb County, AL



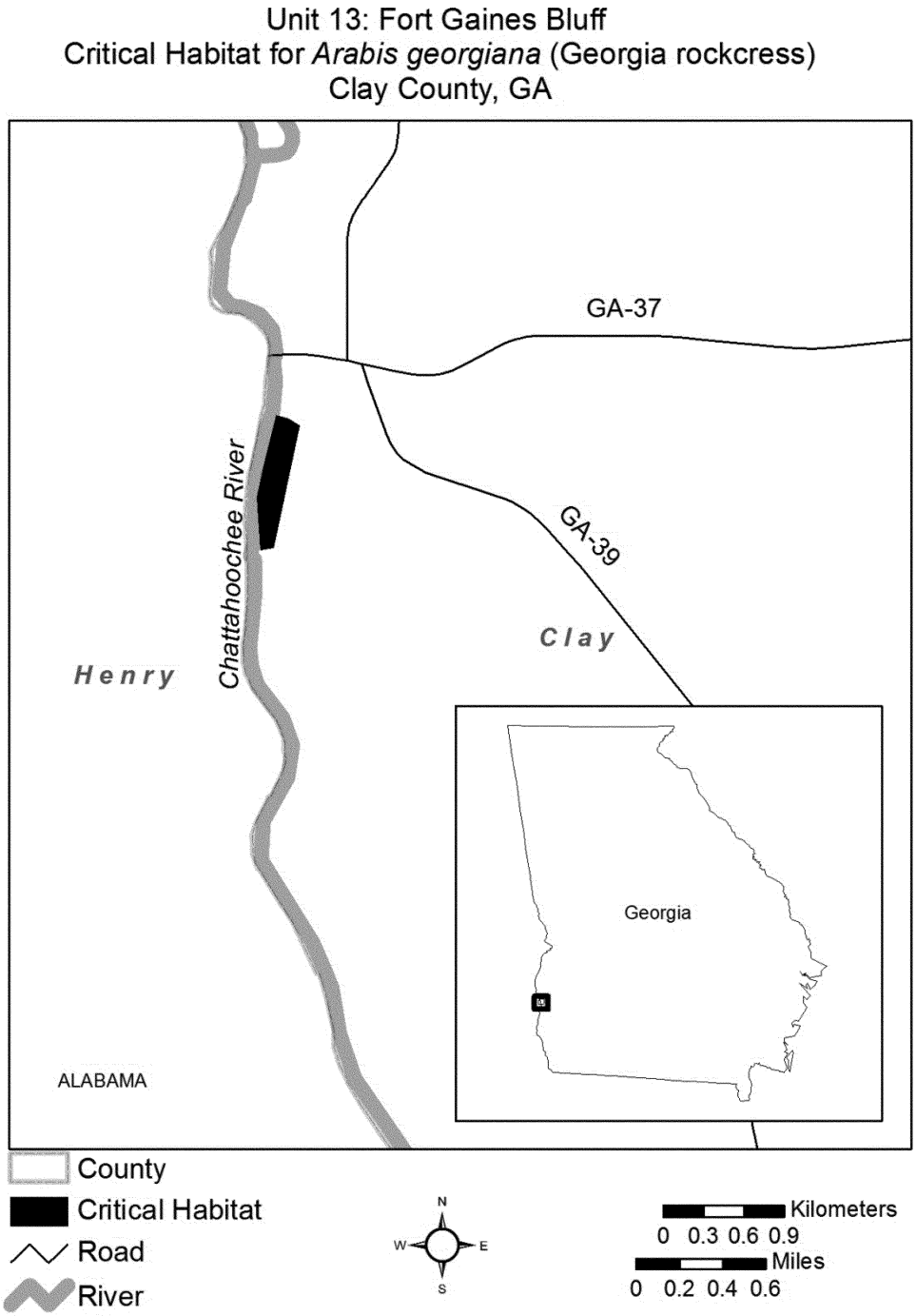
(16) Unit 11: McGuire Ford/Limestone Park, Bibb County, Alabama. Map of Unit 11 follows:



(17) Unit 12: Fort Toulouse State Park, Elmore County, Alabama. Map of Unit 12 follows:



(18) Unit 13: Fort Gaines Bluff, Clay County, Georgia. Map of Unit 13 follows:

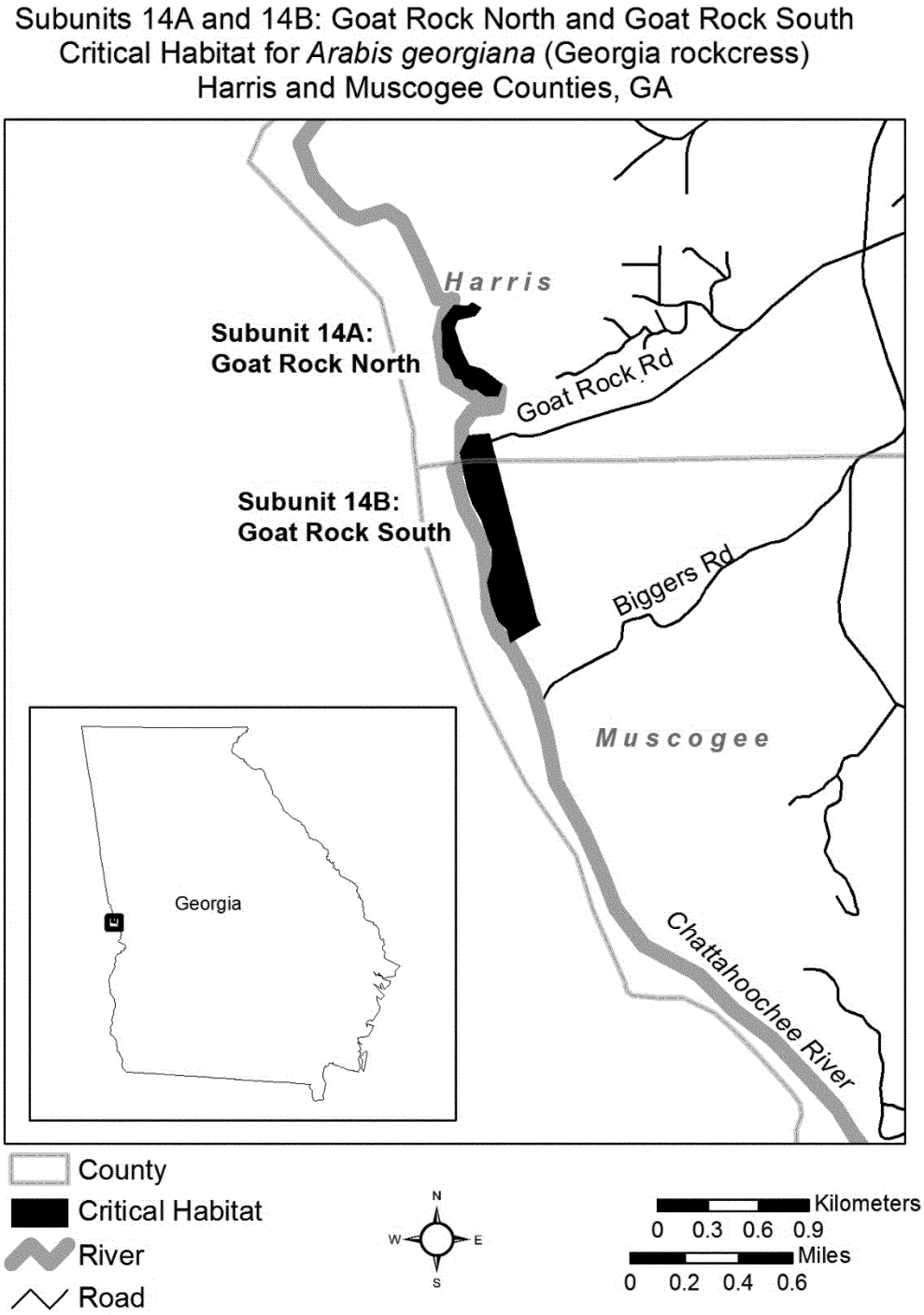


(19) Unit 14: Harris and Muscogee Counties, Georgia.

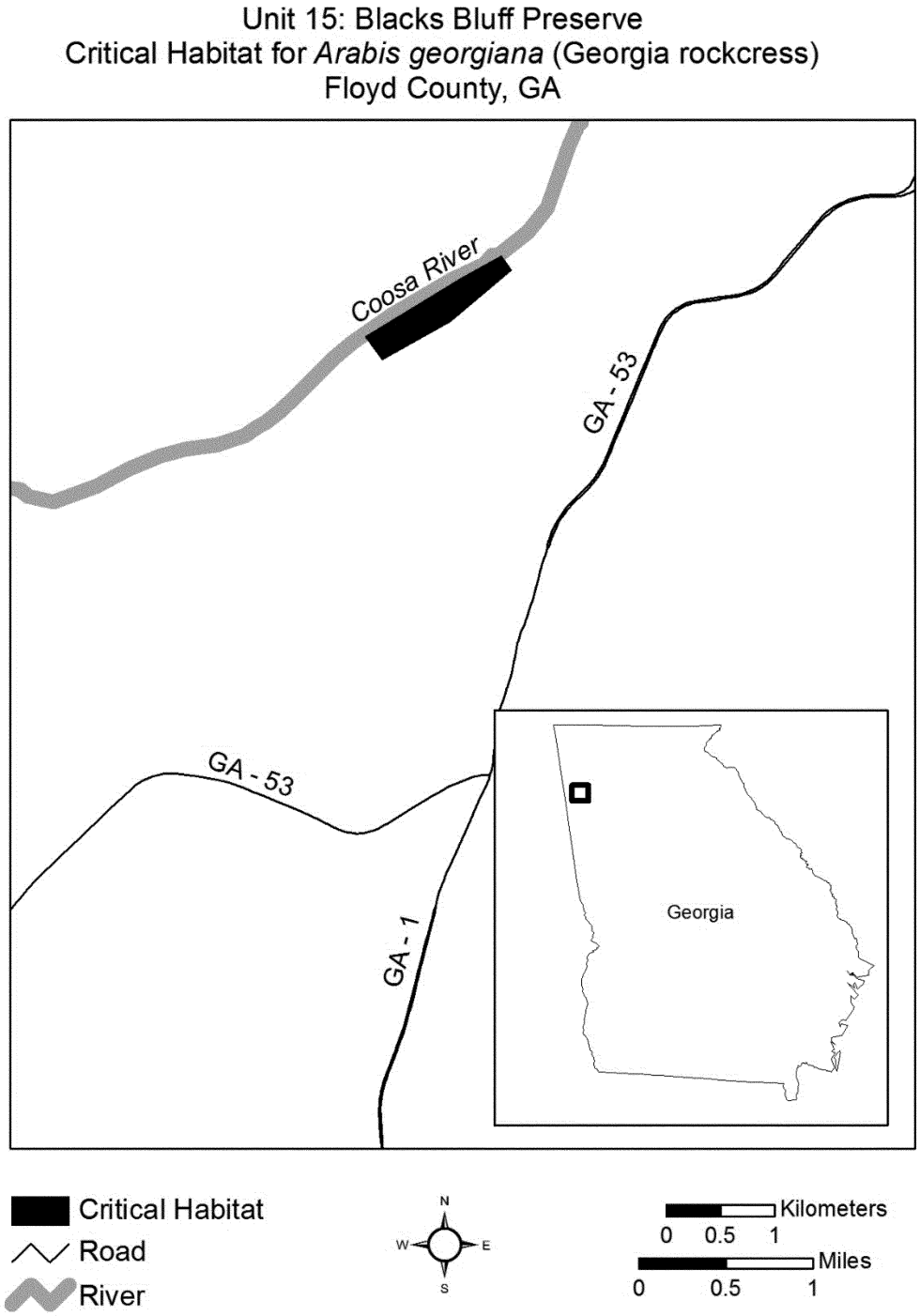
(i) Subunit 14A: Goat Rock North.

(ii) Subunit 14B: Goat Rock South.

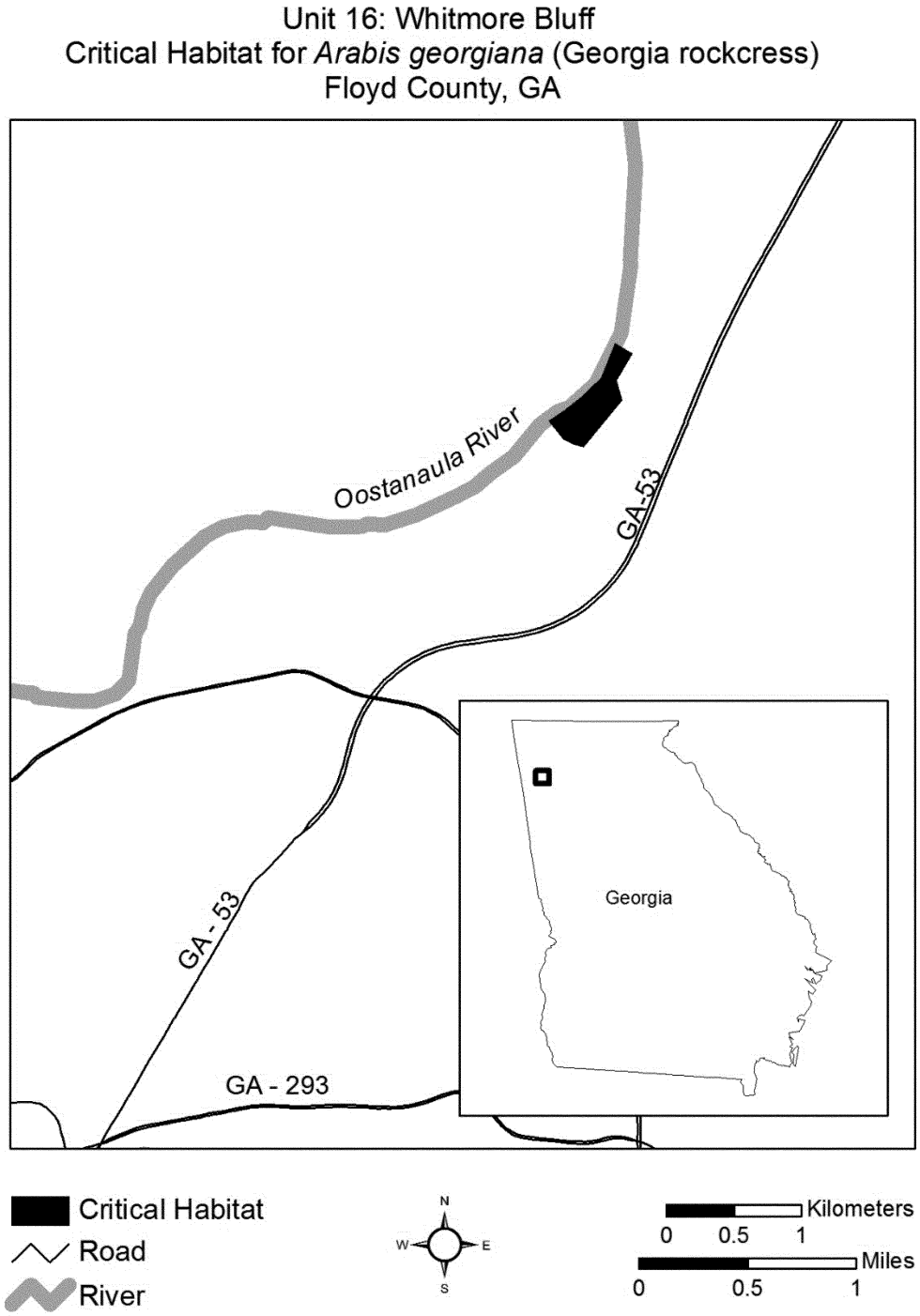
(iii) Map of Subunits 14A and 14B follows:



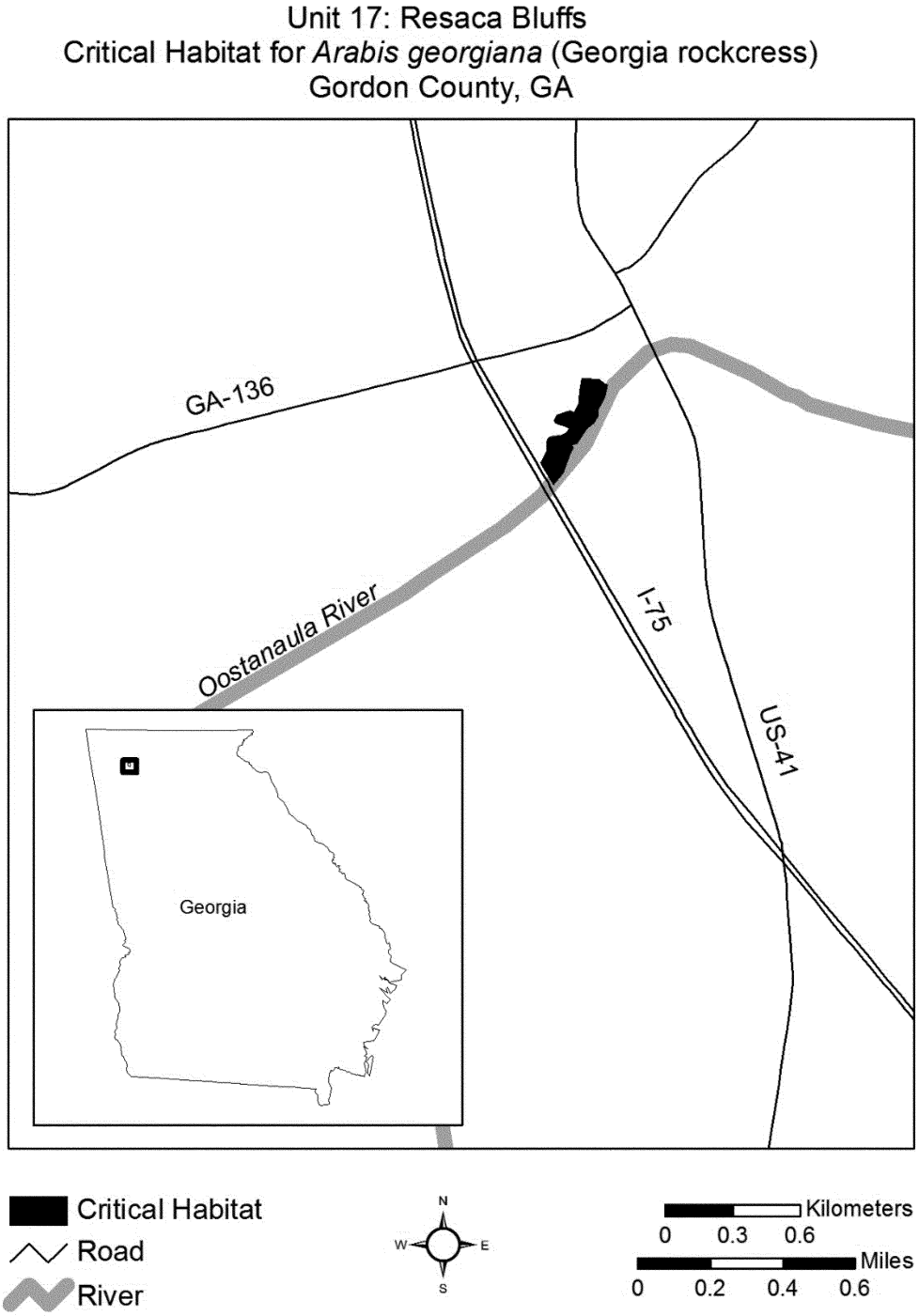
(20) Unit 15: Blacks Bluff Preserve, Floyd County, Georgia. Map of Unit 15 follows:



(21) Unit 16: Whitmore Bluff, Floyd County, Georgia. Map of Unit 16 follows:



(22) Unit 17: Resaca Bluffs, Gordon County, Georgia. Map of Unit 17 follows:



* * * * *

Dated: September 2, 2014.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–21380 Filed 9–11–14; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

[Docket No. FWS–HQ–WSR–2014–0040; FVWF941009000007B–XXX–FF09W11000]

RIN 1018–BA56

Financial Assistance: Wildlife Restoration, Sport Fish Restoration, Hunter Education and Safety; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; technical amendment.

SUMMARY: The Fish and Wildlife Service published a final rule in the **Federal Register** on August 1, 2011 (76 FR 46150). We included in this final rule a combined symbol to use when referring to both the Wildlife Restoration and the Sport Fish Restoration programs together. The language around the symbol is in reverse order, and this document corrects the error.

DATES: Effective September 12, 2014.

FOR FURTHER INFORMATION CONTACT: Lisa E. Van Alstyne, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703–358–1942.

SUPPLEMENTARY INFORMATION:

Background

Symbols were added to the regulations governing the Wildlife Restoration and Sport Fish Restoration (WSFR) programs through regulations published December 15, 1987 (52 FR 47571). One symbol represents the Wildlife Restoration Program, one represents the Sport Fish Restoration Program, and one represents the combined programs. The language in the combined symbol reads ''Sport Fish and Wildlife Restoration.'' The symbols have remained the same since originally published.

Need for Correction

At the time the symbol was first developed, the program within the Service that administers these grant programs was called ''Division of Federal Aid.'' Since then, we have changed our name to the ''Wildlife and Sport Fish Restoration Program.'' The order of programs reflects that the Wildlife Restoration Program was authorized prior to the Sport Fish Restoration Program. It has been many years since we have changed our name, and referencing WSFR is now common. Having the combined symbol read ''Sport Fish and Wildlife Restoration'' is confusing to States who implement projects with WSFR funding; manufacturers who contribute millions of dollars through excise taxes, boater fuel and electric motor taxes, and import duties that contribute to the Wildlife Restoration Account and the Sport Fish Restoration and Boating Trust Fund; and interested stakeholders.

In 2011, we completed a comprehensive review and update to 50 CFR part 80 (76 FR 46150, August 1, 2011). We neglected to correct the symbol to reflect the current name of the WSFR program and now correct this error.

If a State or other entity is using the former combined symbol on signs, print media, or other physical items to identify WSFR or WSFR-funded projects, they should continue to use those items until quantities are exhausted or they are normally replaced. The new combined symbol may be used immediately for electronic updates or new signs, print media, or other physical items. If you have questions on the appropriate use of the combined symbol, contact the person listed under **FOR FURTHER INFORMATION CONTACT**, above.

List of Subjects in 50 CFR Part 80

Fish, Grant programs—natural resources, Reporting and recordkeeping requirements, Signs and symbols, Wildlife.

Regulation Promulgation

Accordingly, we amend 50 CFR part 80 as follows:

PART 80—ADMINISTRATIVE REQUIREMENTS, PITTMAN-ROBERTSON WILDLIFE RESTORATION AND DINGELL-JOHNSON SPORT FISH RESTORATION ACTS

■ 1. The authority citation for 50 CFR 80 continues to read as follows:

Authority: 16 U.S.C. 669–669k; 16 U.S.C. 777–777n, except 777e–1 and g–1.

■ 2. Amend § 80.99 by revising paragraph (c) to read as follows:

§ 80.99 Are symbols available to identify projects?

* * * * *

(c) The symbol of the Acts when used in combination follows:

Dated: August 29, 2014.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–21824 Filed 9–11–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217095–2081–04]

RIN 0648–XD479

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Extension of the 2014 Gulf of Mexico Recreational Red Grouper Season

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

ACTION: Temporary rule; extension.

SUMMARY: NMFS extends the recreational fishing season for the red grouper component of the reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2014 fishing year through this temporary rule. On April 30, 2014, NMFS published a temporary rule to implement accountability measures and a closure for the recreational sector for red grouper. That temporary rule reduced the red grouper bag limit in the Gulf EEZ to three fish (within the current four-fish grouper aggregate bag limit) and announced a recreational fishing season closure date of September 16, 2014, based on a recreational annual catch limit (ACL) overage in 2013 and the reduced bag limit. However, using updated landings information from 2014, NMFS has determined that the recreational fishing season for red grouper may be extended for an additional 18 days. The purpose of this action is to provide fishermen the opportunity to harvest the recreational annual catch target (ACT) for Gulf red grouper, and the opportunity to achieve the optimum yield for the fishery, thus

enhancing social and economic benefits to the fishery.

DATES: The extension is effective 12:01 a.m., local time, September 16, 2014, until 12:01 a.m., local time, October 4, 2014. The season will then be closed until it reopens on January 1, 2015, the beginning of the 2015 recreational fishing season, unless further notification is published in the **Federal Register**.

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

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf, which includes red grouper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). All weights specified in this rule are gutted weight.

The Gulf red grouper recreational ACL is 1,900,000 lb (861,826 kg), and the recreational ACT is 1,730,000 lb (784,715 kg), as specified in 50 CFR 622.41(e)(2)(iv). The recreational ACL and ACT for red grouper were implemented through Amendment 32 to the FMP (77 FR 6988, February 10, 2012). Red grouper are not overfished, based on the most recent Status of U.S. Fisheries Report to Congress.

NMFS determined that the 2013 recreational landings exceeded the 2013 recreational ACL of 1,900,000 lb (861,826 kg) by 492,113 lb (223,219 kg) and implemented post-season AMs through a temporary rule published on April 30, 2014 (79 FR 24353). In accordance with regulations at 50 CFR 622.41(e)(2)(ii), that temporary rule reduced the bag limit for Gulf red grouper from four to three fish (within the four-fish grouper aggregate bag limit) and reduced the recreational fishing season for Gulf red grouper for the 2014 fishing year to ensure landings do not exceed the recreational ACT.

NMFS now has updated landings data for recreational red grouper for the 2014 fishing year and has determined that landings were less than projected. Therefore, NMFS is extending the recreational fishing season for red grouper through this temporary rule. The extension is effective 12:01 a.m., local time, September 16, 2014, until 12:01 a.m., local time, October 4, 2014. The season will then be closed until it reopens on January 1, 2015, the beginning of the 2015 recreational fishing season, unless further notification is published in the **Federal Register**.

During the recreational sector closure, the bag and possession limit for red grouper in or from the Gulf EEZ is zero. This bag and possession limit applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal waters.

The recreational sector for red grouper will reopen on January 1, 2015, the beginning of the 2015 recreational fishing season. The 2015 bag limit for red grouper will return to four fish, as specified at 50 CFR 622.38(b)(2), unless AMs are implemented due to a recreational ACL overage in 2014, or the Council takes subsequent regulatory action to adjust the bag limit.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf red grouper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.41(e)(2)(ii) 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.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule. Such procedures are unnecessary because the final rule for Amendment 32 to the FMP (77 FR 6988, February 10, 2012) that established the recreational ACL, ACT, and AMs has already been subject to notice and comment, and all that remains is to notify the public that additional harvest remains on the established recreational ACT and, therefore, the recreational fishing season for Gulf red grouper will be extended for 18 additional days.

This rule relieves a restriction by extending the recreational fishing season for red grouper. Because it relieves a restriction, this rule is not subject to the 30-day delayed effectiveness provision of 5 U.S.C. 553(d)(1).

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

Dated: September 8, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–21765 Filed 9–9–14; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD496

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule.

SUMMARY: NMFS is reallocating the projected unused amounts of the Aleut Corporation's pollock directed fishing allowance from the Aleutian Islands subarea to the Bering Sea subarea directed fisheries. These actions are necessary to provide opportunity for harvest of the 2014 total allowable catch of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 12, 2014, until 2400 hrs, A.l.t., December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In the Aleutian Islands subarea, the portion of the 2014 pollock total allowable catch (TAC) allocated to the Aleut Corporation's directed fishing allowance (DFA) is 7,350 metric tons (mt) as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014), and through

reallocation (79 FR 12959, March 7, 2014).

As of September 4, 2014, the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that 4,000 mt of Aleut Corporation's DFA will not be harvested. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(*4*), NMFS reallocates 4,000 mt of Aleut Corporation's DFA from the Aleutian Islands subarea to the 2014 Bering Sea subarea allocations. The 4,000 mt of pollock is apportioned to the AFA Inshore sector (50 percent), AFA catcher/processor sector (40 percent), and the AFA mothership sector (10 percent). The 2014 Bering Sea pollock incidental catch allowance remains at 38,770 mt. As a result, the harvest specifications for pollock in the Aleutian Islands subarea included in the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014)), and revised (79 FR 12959, March 7, 2014), are further revised as follows: 3,350 mt to Aleut Corporation's DFA. Furthermore, pursuant to § 679.20(a)(5), Table 3 of the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014), and revised (79 FR 12959, March 7, 2014), is further revised to make 2014 pollock allocations consistent with this reallocation. This reallocation results in an adjustment to the 2014 Aleut Corporation allocation established at § 679.20(a)(5).

TABLE 3—FINAL 2014 AND 2015 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2014 Allocations	2014 A season [1]		2014 B season [1]	2015 Allocations	2015 A season [1]		2015 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea	1,280,650	n/a	n/a	n/a	1,258,000	n/a	n/a	n/a
CDQ DFA	128,600	51,440	36,008	77,160	125,800	50,320	35,224	75,480
ICA [1]	38,770	n/a	n/a	n/a	38,495	n/a	n/a	n/a
AFA Inshore	556,640	222,656	155,859	333,984	546,853	218,741	153,119	328,112
AFA Catcher/Processors [3]	445,312	178,125	124,687	267,187	437,482	174,993	122,495	262,489
Catch by C/Ps	407,460	162,984	n/a	244,476	400,296	160,118	n/a	240,178
Catch by CVs [3]	37,852	15,141	n/a	22,711	37,186	14,874	n/a	22,312
Unlisted C/P Limit [4]	2,227	891	n/a	1,336	2,187	875	n/a	1,312
AFA Motherships	111,328	44,531	31,172	66,797	109,371	43,748	30,624	65,622
Excessive Harvesting Limit [5]	194,824	n/a	n/a	n/a	191,398	n/a	n/a	n/a
Excessive Processing Limit [6]	333,984	n/a	n/a	n/a	328,112	n/a	n/a	n/a
Total Bering Sea DFA	1,113,280	445,312	311,718	667,968	1,093,705	437,482	306,237	656,223
Aleutian Islands subarea [1]	5,350	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	0	0	n/a	0	1,900	760	n/a	1,140
ICA	2,000	1,000	n/a	1,000	2,000	1,000	n/a	1,000
Aleut Corporation	3,350	3,350	n/a	0	15,100	14,005	n/a	1,095
Bogoslof District ICA [7]	75	n/a	n/a	n/a	75	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3.4 percent), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (2,000 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the pollock directed fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(*A*)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(*A*)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of AI pollock. Since the pollock fishery is currently open, it is important to immediately inform the industry as to the final Bering Sea subarea pollock allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery; allow the industry to plan for the fishing season and avoid potential disruption to the fishing fleet as well as processors; and provide opportunity to harvest increased seasonal pollock allocations while value is optimum. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 4, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon

the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: September 8, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–21766 Filed 9–11–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 79, No. 177

Friday, September 12, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0624 Directorate Identifier 2014–NM–005–AD]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

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 717–200 airplanes; Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40 and DC–10–40F airplanes; Model MD–10–10F and MD–10–30F airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes. This proposed AD was prompted by reports of latent air data transducer degradation. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate special compliance items (SCIs). We are proposing this AD to prevent erroneous air data information, which could lead to a mid-air collision within reduced vertical separation minimum (RVSM) airspace.

DATES: We must receive comments on this proposed AD by October 27, 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.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; 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–2014–0624; 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: Jen Pei, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5320; fax: 562–627–5210; email: *jen.pei@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–2014–0624; Directorate Identifier 2014–NM–005–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 latent air data transducer degradation. This condition, if not corrected, could result in erroneous air data information, which could lead to a mid-air collision within reduced vertical separation minimum (RVSM) airspace.

Relevant Service Information

We reviewed the following service information, which describes procedures for doing a functional test of the captain's and first officer's altimeters.

- Boeing Report No. MDC–02K1003, Trijet Special Compliance Item (SCI) Report 34–4, ''Functional Test of the Captain and First Officer's Altimeter,'' Revision K, dated February 1, 2013.
- Boeing Report No. MDC–92K9145, Twinjet SCI Report 34–1—''Functional Test of the Captain and First Officer's Altimeter,'' Revision M, dated February 5, 2013.

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, as applicable, to incorporate special compliance items (SCIs).

This proposed AD requires 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 required inspections that will ensure the continued operational safety of the airplane.

Differences Between This Proposed AD and the Service Information

Boeing Report No. MDC–02K1003, Trijet SCI Report 34–4, ''Functional Test of the Captain and First Officer's Altimeter,'' Revision K, dated February 1, 2013, describes actions that apply to The Boeing Company Model MD–11 and MD–11F airplanes. Based on in-service data, we have determined that rulemaking action is unnecessary at this time for these airplanes. However, we might consider additional rulemaking if further data is received that identifies an unsafe condition on these airplanes.

Costs of Compliance

We estimate that this proposed AD affects 716 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
Maintenance or inspection program revision ...	1 work-hour × $85 per hour = $85	$0	$85	$60,860

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–2014–0624; Directorate Identifier 2014–NM–005–AD.

(a) Comments Due Date

We must receive comments by October 27, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) The Boeing Company Model 717–200 airplanes.

(2) The Boeing Company Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes; and Model MD–10–10F and MD–10–30F airplanes.

(3) The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by reports of latent air data transducer degradation. We are issuing this AD to prevent erroneous air data information, which could lead to a mid-air collision within reduced vertical separation minimum (RVSM) airspace.

(f) Compliance

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

(g) Maintenance or Operations Program Revision

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, by incorporating the information specified in paragraphs (g)(1), (g)(2), or (g)(3) of this AD, as applicable. The initial compliance time for the tasks is within 18 months after the effective date of this AD.

(1) For Model 717–200 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes: Incorporate Special Compliance Item (SCI) 34–1, ''Functional Test of the Captain and First Officer's Altimeter'' into the Boeing Modification Services MDC–92K9145, ''Twinjet Special Compliance Items Report,'' Revision M, dated February 5, 2013.

(2) For Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40 and DC–10–40F airplanes; Incorporate SCI 34–4, ''Functional Test of the Captain and First Officer's Altimeter'' into the Boeing Modification Services MDC–02K1003, ''Trijet Special Compliance Item Report,'' Revision K, dated February 1, 2013.

(3) For and Model MD–10–10F and MD–10–30F airplanes: Incorporate SCI 34–4, ''Functional Test of the Captain and First Officer's Altimeter'' into the Boeing Modification Services MDC–02K1003, ''Trijet Special Compliance Item Report,'' Revision K, dated February 1, 2013.

(h) No Alternative Actions and Intervals

After accomplishment of the 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) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-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, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Jen Pei, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5320; fax: 562–627–5210; email: *jen.pei@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; 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.

Issued in Renton, Washington, on September 5, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–21763 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14–139, RM–11732; DA 14–1273]

Television Broadcasting Services; Mount Vernon, Illinois

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by WPXS, Inc. (''WPXS''), the licensee of station WPXS(TV), channel 21, Mount Vernon, Illinois, requesting the substitution of channel 11 for channel 21 at Mount Vernon. While the Commission instituted a freeze on the acceptance of full power television rulemaking petitions requesting channel substitutions in May 2011, it recently adopted rules to implement the broadcast television spectrum incentive auction authorized by the Spectrum Act which facilitates the voluntary return of television spectrum usage rights and reorganizes the broadcast television bands. The Commission will be able to recover a portion of ultra-high frequency (''UHF'') spectrum for new, flexible-use licenses suitable for mobile broadband services. By relinquishing channel 21, a UHF channel, the proposed channel substitution will assist the Commission in the repacking process by freeing up a UHF channel, which serves the public interest.

DATES: Comments must be filed on or before October 14, 2014, and reply comments on or before October 27, 2014.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: John R. Feore, Esq., Cooley LLP, 1299 Pennsylvania Avenue NW., Suite 700, Washington, DC 20004–2400.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *Joyce.Bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 14–139, adopted September 4, 2014, and released September 4, 2014. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via email *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Illinois is amended by adding channel 11 and removing channel 21 at Mount Vernon.

[FR Doc. 2014–21751 Filed 9–11–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14–141, RM–11734; DA 14–1275]

Television Broadcasting Services; Rome, Georgia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Ion Media Atlanta License, Inc. (''Ion Media''), the licensee of station WPXA–TV, channel 51, Rome, Georgia, requesting the substitution of channel 31 for channel 51 at Rome. While the Commission instituted a freeze on the acceptance of full power television rulemaking petitions requesting channel substitutions in May 2011, it subsequently announced that it would lift the freeze to accept such petitions for rulemaking seeking to relocate from channel 51 pursuant to a voluntary relocation agreement with Lower 700 MHz A Block licensees. Ion Media has entered into such a voluntary relocation agreement with T-Mobile USA, Inc. and states that operation on channel 31 would eliminate potential interference to and from wireless operations in the adjacent Lower 700 MHZ A Block.

DATES: Comments must be filed on or before October 14, 2014, and reply comments on or before October 27, 2014.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Derek Teslik, Esq., Cooley LLP, 1299 Pennsylvania Avenue NW., Suite 700, Washington, DC 20004–2400.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *Joyce.Bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 14–141, adopted September 4, 2014, and released September 4, 2014. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via email *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Georgia is amended by adding channel 31 and removing channel 51 at Rome.

[FR Doc. 2014–21749 Filed 9–11–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14–140, RM–11733; DA 14–1274]

Television Broadcasting Services; Kansas City, Missouri

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Ion Media Kansas City License, Inc. (''Ion Media''), the licensee of station KPXE–TV, channel 51, Kansas City, Missouri, requesting the substitution of channel 30 for channel 51 at Kansas City. While the Commission instituted a freeze on the acceptance of full power television rulemaking petitions requesting channel substitutions in May 2011, it subsequently announced that it would lift the freeze to accept such petitions for rulemaking seeking to relocate from channel 51 pursuant to a voluntary relocation agreement with Lower 700 MHz A Block licensees. Ion Media has entered into such a voluntary relocation agreement with T-Mobile USA, Inc. and states that operation on channel 30 would eliminate potential interference to and from wireless operations in the adjacent Lower 700 MHZ A Block.

DATES: Comments must be filed on or before October 14, 2014, and reply comments on or before October 27, 2014.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: John R. Feore, Esq., Cooley LLP, 1299 Pennsylvania Avenue NW., Suite 700, Washington, DC 20004–2400.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *Joyce.Bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 14–139, adopted September 4, 2014, and released September 4, 2014. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via email *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Amend S 73.622 in paragraph (i), Post-Transition Table of DTV Allotments for Missouri by adding channel 30 in numerical order and removing channel 51 at Kansas City.

[FR Doc. 2014–21750 Filed 9–11–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 107, and 171

[Docket No. PHMSA–2012–0260 (HM–233E)]

RIN 2137–AE99

Hazardous Materials: Special Permit and Approvals Standard Operating Procedures and Evaluation Process

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Proposed rule; correction.

SUMMARY: PHMSA is correcting language it issued in a notice of proposed rulemaking under this Docket on August 12, 2014, that proposes to include the standard operating procedures and criteria used to evaluate applications for special permits and approvals under the Hazardous Materials Regulations. The NPRM addresses certain matters identified in the Hazardous Materials Transportation Safety Act of 2012 related to these procedures as they are executed by PHMSA's Office of Hazardous Materials Safety's Approvals and Permits Division. This correction adds language to clarify that special permit and approval applications that undergo review by an Operating Administration (OA) will complete this review before they undergo an automated review. This proposed correction also clarifies that an OA review, depending on its completeness, may negate the need for the automated review.

DATES: The proposed rule published August 12, 2014 (79 FR 47047), is corrected as of September 12, 2014.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Office of Hazardous Materials Safety, Approvals and Permits Division, (202) 366–4535 or Eileen Edmonson, Office of Hazardous Materials Safety, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration (PHMSA), 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In proposed rule FR Doc. 2014–18925, 79 FR 47047, beginning on page 47047 in the issue of August 12, 2014, make the following corrections:

■ 1. On page 47062 in the 3rd column revise the first sentence of paragraph 3(b)(i), entitled ''Automated Review,'' to read as follows:

''(i) *Automated review.* An applicant for a special permit or approval which requires a fitness evaluation, but does not include coordination with an OA, is subject to an automated fitness review.''

■ 2. On page 47063 in the 1st column, revise the first sentence of paragraph 3(b)(ii), entitled 'Safety profile review,'' to read as follows:

''(ii) *Safety profile review.* A fitness coordinator, as defined in § 107.1, conducts a safety profile review of all applicants meeting one of the criteria listed earlier in this appendix under ''automated review,'' and all applicants whose fitness reviews are subject to coordination with an OA, as described in introductory paragraph 3(b) of this appendix.''

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2014–21776 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 79, No. 177

Friday, September 12, 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

September 8, 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 October 14, 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 20503. 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) 720–8681.

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.

National Agricultural Statistics Service

Title: 2014 Tenure, Ownership, and Transition of Agricultural Land.

OMB Control Number: 0535–0240.

Summary of Collection: The 2014 Tenure, Ownership, and Transition of Agricultural Land (TOTAL) is an integral part of the 2012 Census of Agriculture and is conducted under the authority of the Census of Agriculture Act of 1997 (Pub. L. 105–113). This law requires the Secretary of Agriculture to conduct a census of agriculture in 1998 and every fifth year following 1998. The primary functions of the National Agricultural Statistics Service (NASS) are to prepare and issue state and national estimates of crop and livestock production, disposition, and prices and to collect information on related environmental and economic factors.

Need and Use of the Information: TOTAL will be conducted as a follow-on survey to the 2012 Census of Agriculture and will use two questionnaires, one for farm operators and one for landlords who do not farm. The survey will obtain data to accurately define the economic status of U.S. farm operations and households. Detailed, farm level, economic data are essential for making informed decisions relating to the farming industry. The combined data series will yield a complete picture of farm expenses and land ownership of American farmland.

This is a reinstatement of the previously approved Census of Agriculture follow-on survey titled Agricultural Economics and Land Ownership Survey (AELOS).

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 90,000.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 119,618.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–21723 Filed 9–11–14; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 8, 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 and other forms of information technology.

Comments regarding this information collection received by October 14, 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 20503. Commentors 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) 720–8681.

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.

Forest Service

Title: Small Business Timber Set-Aside Program: Appeal Procedures on Recomputation of Shares.

OMB Control Number: 0596–0141.

Summary of Collection: The Conference Report accompanying the 1997 Omnibus Appropriation Act (Pub L. 104–208) requires that the Forest Service (FS) establish a process by which purchasers may appeal decisions concerning recomputations of Small Business Set-aside (SBA) shares or structural recomputations of SBA shares, or changes in policies impacting the Small Business Timber Sale Set-Aside Program. FS adopted the Small Business Timber Sale Set-Aside Program on July 26, 1990. FS administers the program in cooperation with the Small Business Administration under the authorities of the Small Business Act of 1988, the National Forest Management Act of 1976, and SBA's regulations at Part 121 of Title 13 of the Code of Federal Regulations. The program is designed to ensure that small business timber purchasers have the opportunity to purchase a fair proportion of National Forest System timber offered for sale.

Need and Use of the Information: Under the program, the FS must re-compute the shares of timber sales to be set aside for qualifying small businesses every five years based on the actual volume of saw timber purchased by small businesses. Re-computation of shares must occur if there is a change in manufacturing capability, if the purchaser size class changes, or if certain purchaser(s) discontinue operations. The appeal information is collected in writing and is possible, in most locations to be sent via email and attached documents to a Forest Service Officer. The collected information is reviewed by FS officials who use the information to render decisions related to re-computations of timber sale share to be set-aside for small business timber purchasers.

Description of Respondents: Business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 360.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–21717 Filed 9–11–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: Rated Orders Under the Defense Priorities and Allocations System (DPAS).

OMB Control Number: 0694–0092.

Form Number(s): N/A.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 1,434,650.

Average Hours per Response: 1 to 15 minutes.

Burden Hours: 45,290.

Needs and Uses: This collection involves the exchange of rated order information between customers and suppliers. The recordkeeping requirement is necessary for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, et seq.) and the Selective Service Act of 1948 (50 U.S.C. App. 468). Any person (supplier) who receives a priority rated order under DPAS regulation (15 CFR part 700) must notify the customer of acceptance or rejection of that order within a specified period of time. Also, if shipment against a priority rated order will be delayed, the supplier must immediately notify the customer.

Affected Public: Businesses and other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain benefits.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: September 8, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–21716 Filed 9–11–14; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the People's Republic of China (''PRC''), covering the period of review (''POR'') from February 1, 2013, through January 31, 2014. We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* September 12, 2014.

FOR FURTHER INFORMATION CONTACT: Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2593.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[1] The product is currently classified under the following Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description, available in the Preliminary Decision Memorandum, remains dispositive.[2]

[1] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Certain Frozen Warmwater Shrimp from the People's Republic of China: Decision Memorandum for the Preliminary Results of the 2013–2014 Administrative Review'' dated concurrently with these results (''Preliminary Decision Memorandum''), for a complete description of the Scope of the Order.

[2] On April 26, 2011, the Department amended the antidumping duty order to include dusted shrimp,

Methodology

The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (''the Act''). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, which is hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Background

On April 1, 2014, the Department initiated an administrative review of the *Order* on certain frozen warmwater shrimp from the PRC covering 60 companies for the POR.[3] The *Initiation Notice* notifies the firms for which a review was initiated that they ''must complete, as appropriate, either a separate rate application or certification'' if they want to qualify for a separate rate in this administrative review.[4] The *Initiation Notice* also states that ''{i}f a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review . . . it must notify the Department within 60 days of publication of this notice in the **Federal Register**.''[5] Shantou Yuexing Enterprise Company (''SYEC''), Rizhao Smart Foods Co., Ltd. (''Smart Foods''), and Zhanjiang Regal Integrated Marine Resources Co., Ltd. (''Regal'')[6] submitted ''no shipment certifications'' to the Department.[7] No companies under review filed separate rate certifications or applications.

Preliminary Results of Review

Based upon the no shipment certifications of SYEC and Regal, and our review of U.S. Customs and Border Protection (''CBP'') information, we preliminarily find that SYEC and Regal had no shipments during the POR. The Department's policy is to conduct administrative reviews only where there exists at least one POR entry of subject merchandise, because duties cannot be assessed where there are no suspended entries.[8] Because there cannot be a review where there are no entries, companies that certify to no shipments retain their most recently-determined separate rate, provided that no information contrary to those claims is presented to, or obtained by, the Department. Therefore, SYEC and Regal retain their separate rate status from prior reviews.[9] Because Smart Foods was previously found to be part of the PRC-wide entity and continues to be part of the entity in this review,[10] we are not making a determination regarding no shipments with respect to Smart Foods.

We also preliminarily find that 58 companies, including Smart Foods, should be treated as part of the PRC-wide entity. The Department's change in policy regarding conditional review of the PRC-wide entity applies to this administrative review.[11] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity, the entity is not under review and the entity's rate is not subject to change. The Department preliminarily finds that 58 companies[12] under review have not established eligibility for a separate rate and, thus,

pursuant to the CIT decision in *Ad Hoc Shrimp Trade Action Committee v. United States,* 703 F. Supp. 2d 1330 (CIT 2010), and the U.S. International Trade Commission determination, which found the domestic like product to include dusted shrimp. *See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Amended Antidumping Duty Orders in Accordance with Final Court Decision,* 76 FR 23277 (April 26, 2011) (''*Order*''); *see also Frozen Warmwater Shrimp from Brazil, China, India, Thailand, and Vietnam* (Investigation Nos. 731–TA–1063, 1064, 1066–1068 (Review), USITC Publication 4221, March 2011.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 79 FR 18262 (April 1, 2014) (''*Initiation Notice*'').

[4] *Id.,* 79 FR 18263.

[5] *Id.,* 79 FR 18262.

[6] In the *Initiation Notice,* we stated that because the order was revoked with respect to subject merchandise produced and exported by Regal, this administrative review covers all subject merchandise exported by Regal and manufactured by any company other than Regal. *See Initiation Notice* 79 FR 18275 at footnote 5.

[7] *See* Letter to the Secretary of Commerce from Shantou Yuexing ''Shantou Yuexing Enterprise Company's Request for rescinding an Administrative Review'' (April 2, 2014); Letter to the Secretary of Commerce from Rizhao Smart Foods Co., Ltd. ''Certificate of No Sales'' (April 9, 2014); Letter to the Secretary of Commerce from Zhanjiang Regal Integrated Marine Resources Co., Ltd. ''No Shipments Statement of Zhanjiang Regal Integrated Marine Resources Co., Ltd.'' (June 2, 2014).

[8] *See, e.g., Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation: Notice of Rescission of Antidumping Duty Administrative Review,* 77 FR 65532 (October 29, 2012) and accompanying memorandum at Issue 2.

[9] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Administrative Review; 2011–2012,* 78 FR 56209 (September 12, 2013); *see also Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 49460 (August 13, 2010).

[10] *See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part,* 77 FR 53856 (September 4, 2012) at Appendix II; *see also Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Administrative Review; 2011–2012,* 78 FR 56209 (September 12, 2013).

[11] *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[12] Those companies for which a review was requested and which we preliminarily determine are part of the PRC-wide entity include: Asian Seafoods (Zhanjiang) Co., Ltd., Beihai Angbang Seafood Co., Ltd., Beihai Boston Frozen Food Co., Ltd., Dalian Shanhai Seafood Co., Ltd., Dalian Taiyang Aquatic Products Co., Ltd., Eimskip Logistics (Qingdao) Co., Ltd., EZ Logistics Inc., EZ Logistics LLC (Qingdao Branch), Fujian Chaohui International Trading, Fujian Rongjiang Import and Export Co., Ltd., Fujian Tea Import & Export Co., Ltd., Fujian Zhaoan Haili Aquatic Co., Ltd., Fuqing Dongwei Aquatic Products Ind., Fuqing Minhua Trade Co., Ltd., Fuqing Yihua Aquatic Food Co., Ltd., Guangdong Foodstuffs Import & Export (Group) Corporation, Guangdong Gourmet Aquatic Products Co., Ltd., Guangdong Jinhang Food Co., Ltd., Guangdong Jinhang Foods Co., Ltd., Guangdong Wanshida Holding Corp., Guangdong Wanya Foods Fty. Co., Ltd., Guangzhou Shi Runjin Trading Development Co., Ltd., Haida Seafood Co., Ltd., HaiLi Aquatic Product Co., Ltd., Hainan Brich Aquatic Products Co., Ltd., Hua Yang (Dalian), International Transportation Service Co., Huazhou XinHai Aquatic Products Co. Ltd., Jiazhou Foods Industry Co., Ltd., Longhai Gelin Foods Co., Ltd., Longhai Gelin Seafoods Co., Ltd., Maoming Xinzhou Seafood Co., Ltd., North Seafood Group Co., Panwin International Logistics Co., Ltd., Pingye Foreign Transportation Corp. Ltd of Shantou, SE.Z., Rizhao Smart Foods Company Limited, Savvy Seafood Inc., Shanghai Lingpu Aquatic Products Co., Ltd., Shanghai Smiling Food Co., Ltd., Shantou Freezing Aquatic Product Foodstuffs Co., Shantou Jiazhou Food Industrial Co., Ltd., Shantou Jin Cheng Food Co., Ltd., Shantou Jintai Aquatic Product Industrial Co., Ltd., Shantou Li An Plastic Products Co. Ltd., Shantou Longsheng Aquatic Product Foodstuff Co., Ltd., Shantou Wanya Foods Fty. Co., Ltd., Thai Royal Frozen Food Zhanjiang Co., Ltd., Yangjiang Anyang Food Co., Ltd., Yangjiang City Haida Seafood Company Ltd., Yangjiang City Hongwai Seafood Company, Ltd., Zhangzhou Xinwanya Aquatic Product Co., Ltd., Zhangzhou Yanfeng Aquatic Product, Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd., Zhanjiang Fuchang Aquatic Products Co., Ltd., Zhanjiang Jinguo Marine Foods Co., Ltd., Zhanjiang Longwei Aquatic Products Industry Co., Ltd., Zhanjiang Universal Seafood Corp., Zhanjiang Newpro Foods Co., Ltd., Zhaoan Yangli Aquatic Co., Ltd.

they should continue to be part of the PRC-wide entity.

Public Comment

Interested parties may submit case briefs or other written comments to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the date of publication of this notice [13] and may submit rebuttal briefs no later than five days after the written comments are filed.[14] Rebuttal briefs may respond only to arguments raised in case briefs and should identify the argument to which it is responding.[15] A table of contents, list of authorities used, and an executive summary of issues should accompany any brief submitted to the Department. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Any interested party may request a hearing within 30 days of publication of this notice.[16] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues you intend to present at the hearing. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.[17] The Department intends to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, unless that time period is extended pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. The Department announced a refinement to its assessment practice in non-market economy (''NME'') cases.[18] Pursuant to this refinement in practice, for entries that were not reported by companies examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[19]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters that received a separate rate in a prior segment of this proceeding that are not listed in footnote 12, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate (including the firms listed in footnote 12), the cash deposit rate will be the existing rate for the PRC-wide entity; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to the importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, 19 CFR 351.221(b)(4).

Dated: September 5, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–21828 Filed 9–11–14; 8:45 am]

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[13] *See* 19 CFR 351.309(c)(ii).

[14] *See* 19 CFR 351.309(d).

[15] *See* 19 CFR 351.309(d)(2).

[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 351.310(d).

[18] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[19] *Id.,* 76 FR 65694.

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before October 2, 2014. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 14–014. *Applicant:* The Research Corporation of the University of Hawaii, 1680 East-West Road, POST 602, Honolulu, HI 96822. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to study man-made and natural materials with special emphasis on extraterrestrial materials and energy storage materials. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 14, 2014.

Docket Number: 14–020. *Applicant:* Louisiana State University, One University Place, Shreveport, Louisiana 71115. *Instrument:* Electron Microscope. *Manufacturer:* Delong Instruments A.s., Czech Republic. *Intended Use:* The instrument is used to study the size, shape and composition of inorganic, organic, biomolecular materials, and cells and tissues. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 26, 2014.

Docket Number: 14–022. *Applicant:* University of Nebraska-Lincoln, 1700 Y

St., Lincoln, Nebraska 68588–0645. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument is used to build complex nanopatterning and nanoscale structures, conduct three-dimensional materials characterization, and targeted transmission electron microscopy sample preparation. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 12, 2014.

Docket Number: 14–025. *Applicant:* Michigan State University, 333 Botswick Ave. NE., Grand Rapids, MI 49503. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is used to generate recombinant proteins and induce aggregation of them using biochemical techniques, as well as to purify protein aggregates from human tissue samples, and study human disease using a number of animal models, and in these experiments conduct ultrastructural analyses of the animal's brain tissues. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* August 26, 2014.

Dated: September 5, 2014.

Richard Herring,

Acting Director of Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2014–21837 Filed 9–11–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD493

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas; Fall Meeting

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

ACTION: Notice of public meeting.

SUMMARY: In preparation for the 2014 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the U.S. Section to ICCAT is announcing the convening of its fall meeting.

DATES: The meeting will be held October 9–10, 2014. There will be an open session on Thursday, October 9, 2014, from 9 a.m. through approximately 1 p.m. The remainder of the meeting will be closed to the public and is expected to end by 1 p.m. on October 10. Interested members of the public may present their views during the public comment session on October 9, 2014.

ADDRESSES: The meeting will be held at the Sheraton Hotel, 8777 Georgia Ave., Silver Spring, MD 20910. Written comments should be sent via email (*Rachel.O'Malley@noaa.gov*). Comments may also be sent via mail to Rachel O'Malley at NMFS, Office of International Affairs, Room 10653, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Rachel O'Malley, Office of International Affairs, 301–427–8373.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet October 9–10, 2014, first in an open session to consider management- and research-related information on stock status of Atlantic highly migratory species and then in a closed session to discuss sensitive matters. The open session will be from 9 a.m. through 1 p.m. on October 9, including an opportunity for public comment beginning at approximately 12:30 p.m. Comments may also be submitted in writing for the Advisory Committee's consideration. Interested members of the public can submit comments by mail or email; use of email is encouraged. All written comments must be received by October 7, 2014 (see **ADDRESSES**).

NMFS expects members of the public to conduct themselves appropriately at the open session of the Advisory Committee meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (e.g., alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

After the open session, the Advisory Committee will meet in closed session to discuss sensitive information relating to upcoming international negotiations regarding the conservation and management of Atlantic highly migratory species.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rachel O'Malley at (301) 427–8373 or *Rachel.O'Malley@noaa.gov* at least 5 days prior to the meeting date.

Dated: September 8, 2014.

Jean-Pierre Plé,

Acting Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2014–21832 Filed 9–11–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD499

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice; public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a meeting of the Standing and Special Reef Fish Scientific and Statistical Committee (SSC).

DATES: The meeting will convene at 8:30 a.m. Wednesday, October 1 until 12 noon Thursday, October 2, 2014.

ADDRESSES:

Meeting address: The meeting will be held at the Gulf Council's office.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Atran, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *steven.atran@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The items of discussion in the individual meeting agenda are as follows:

Standing and Special Reef Fish SSC Agenda, Wednesday, October 1, 2014, 8:30 a.m. Until Thursday, October 2, 2014, 12 Noon

1. Introductions and Adoption of Agenda

2. Approval of August 6–8, 2014 Standing and Special Reef Fish SSC summary minutes
3. Selection of SSC representative at October 20–23, 2014 Council meeting (Mobile)
4. Review of MRIP Calibration Workshop Results
5. Gag ABCs With 2014 Red Tide Event Incorporated
6. FWC Hogfish Benchmark Assessment
7. Estimates of Red Snapper Abundance on Alabama's Offshore Reefs
8. Review of 5-year Research Plan
9. TOR and Schedule for SEDAR 43 (gray triggerfish standard assessment)
10. ABC Control Rule—Council Comments and Next Steps
11. Draft Agenda for 2015 National SSC Meeting
12. Tentative Dates for 2015 SSC Meetings
13. Other Business

The Agenda is subject to change, and the latest version will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both ''gulfguest''. Click on the ''Library Folder'', then scroll down to ''SSC meeting–2014–10''.

The meetings will be webcast over the internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda 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 Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working 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: September 9, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–21778 Filed 9–11–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD494

Advisory Committee and Species Working Group Technical Advisor Appointment

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

ACTION: Notice; Nominations.

SUMMARY: NMFS is soliciting nominations to the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) as established by the Atlantic Tunas Convention Act (ATCA). NMFS is also soliciting nominations for technical advisors to the Advisory Committee's species working groups.

DATES: Nominations must be received by October 14, 2014.

ADDRESSES: Nominations should be sent via email (*Rachel.O'Malley@noaa.gov*). In the alternative, nominations may be sent via mail to Rachel O'Malley at NMFS, Office of International Affairs, Room 10653, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Rachel O'Malley, Office of International Affairs, 301–427–8373.

SUPPLEMENTARY INFORMATION: Section 971b of ATCA (16 U.S.C. 971 *et seq.*) requires that an advisory committee be established that shall be comprised of: (1) Not less than five nor more than 20 individuals appointed by the U.S. Commissioners to ICCAT who shall select such individuals from the various groups concerned with the fisheries covered by the ICCAT Convention; and (2) the chairs (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils. Each member of the Advisory Committee appointed under paragraph (1) shall serve for a term of two years and be eligible for reappointment. All members of the Advisory Committee are appointed in their individual professional capacity and undergo a background screening. Any individual appointed to the Committee who is unable to attend all or part of an Advisory Committee meeting may not appoint another person to attend such meetings as his or her proxy. Members of the Advisory Committee shall receive no compensation for their services. The Secretary of Commerce and the Secretary of State may pay the necessary travel expenses of members of the Advisory Committee. There are currently 20 appointed Advisory Committee members. The terms of these members expire on December 31, 2014.

Section 971b(1) of ATCA specifies that the U.S. Commissioners may establish species working groups for the purpose of providing advice and recommendations to the U.S. Commissioners and to the Advisory Committee on matters relating to the conservation and management of any highly migratory species covered by the ICCAT Convention. Any species working group shall consist of no more than seven members of the Advisory Committee and no more than four technical advisors, as considered necessary by the Commissioners. Currently, there are five species working groups advising the Committee and the U.S. Commissioners: A Bluefin Tuna Working Group, a Swordfish Working Group, a Sharks Working Group, a Billfish Working Group, and a Bigeye Tuna, Albacore, Yellowfin, and Skipjack (BAYS) Tunas Working Group. Technical Advisors to the species working groups serve at the request of the Commissioners; therefore the Commissioners can choose to alter these appointments at any time. As with Committee Members, Technical Advisors may not be represented by a proxy during any official meetings of the Advisory Committee.

Nominations to the Advisory Committee or to a species working group should include a letter of interest and a resume or curriculum vitae. Self-nominations are acceptable. Letters of recommendation are useful but not required. When making a nomination, please specify which appointment (Advisory Committee member or technical advisor to a species working group) is being sought. Nominees may also indicate which of the species working groups is preferred, although placement on the requested group is not guaranteed.

Dated: September 8, 2014.

Jean-Pierre Plé,

Acting Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2014–21835 Filed 9–11–14; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments Must be Received On or Before:* 10/13/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN: 6230–00–NIB–0052—Flashlight, Tactical, Lithium-Ion Rechargeable, Multi-color LEDs

NSN: 6230–00–NIB–0053—Penlight, Tactical-Style, LED, 2 AAA, 5″ Long

NSN: 6230–00–NIB–0054—Flashlight, Tactical-Style, LED, 2 AAA, 6″ Long

NPA: Central Association for the Blind & Visually Impaired, Utica, NY

Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

Coverage: B-List for the Broad Government Requirement as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA

Service:

Service Type/Location: Janitorial Service, National Oceanic & Atmospheric Administration, National Weather Service Office, 2500 Challenger Drive, Midland, TX

NPA: World Technical Services, Inc., San Antonio, TX

Contracting Activity: Department of Commerce, National Oceanic and Atmospheric Administration, Boulder, CO

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014–21759 Filed 9–11–14; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds a product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Effective* 10/13/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 7/11/2014 (79 FR 40066–40067; 7/25/2014 (79 FR 43444) and 8/1/2014 (79 FR 44755–44756), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

NSN: 3990–00–NSH–0081—Sideboard Pallet, 48″ x 48″

NPA: Knox County Association for Retarded Citizens, Inc., Vincennes, IN

Contracting Activity: Army Contracting Command—Crane Army Ammunition Activity, Crane, IN

Coverage: C-List for 100% of the requirement of the Crane Army Ammunition Activity, as aggregated by the Army Contracting Command—Crane Army Ammunition Activity, Crane, IN

Services

Service Type/Location: Janitorial Service, U.S. Geological Survey, Illinois Water Science Center, 1201 W. University Avenue, Suite 100, Urbana, IL

NPA: United Cerebral Palsy of the Land of Lincoln, Springfield, IL

Contracting Activity: Dept of the Interior, Geological Survey, Eastern Region Acquisition and Grants Branch, Reston, VA

Service Type/Location: Custodial Service, FAA, Merrill Field Air Traffic Control Tower, 1950 East Fifth Avenue, Anchorage, AK

NPA: M. C. Resource Management, Anchorage, AK

Contracting Activity: Dept of Transportation, Federal Aviation Administration, Renton, WA

Service Type/Location: Snow Removal Service, GSA, PBS, Region 5, Gerald R. Ford Federal Building, 110 Michigan Street, NW, Grand Rapids, MI

NPA: Hope Network Services Corporation,

Grand Rapids, MI
Contracting Activity: GSA, Public Buildings Service, Acquisition Management Division, Dearborn, MI

Deletions

On 7/25/2014 (79 FR 43444) and 8/1/2014 (79 FR 44755–44756), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

AQL Inspection

NSN: 5340–00–881–5019
NPA: Provail, Seattle, WA
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA

Gloves, Surgical, Powder-Free

NSN: 6515–00–NIB–0735—Biogel, Orthopro Indicator, Underglove, Green, Size 6″
NSN: 6515–00–NIB–0736—Biogel, Orthopro Indicator, Underglove, Green, Size 6.5″
NSN: 6515–00–NIB–0737—Biogel, Orthopro Indicator, Underglove, Green, Size 7″
NSN: 6515–00–NIB–0738—Biogel, Orthopro Indicator, Underglove, Green, Size 7.5″
NSN: 6515–00–NIB–0739—Orthopro Indicator, Underglove, Green, Size 8″
NSN: 6515–00–NIB–0740—Biogel, Orthopro Indicator, Underglove, Green, Size 8.5″
NSN: 6515–00–NIB–0741—Biogel, Orthopro Indicator, Underglove, Green, Size 9″
NSN: 6515–00–NIB–0742—Biogel, Orthopro, Overglove, Straw colored, Size 6″
NSN: 6515–00–NIB–0743—Biogel, Orthopro, Overglove, Straw colored, Size 6.5″
NSN: 6515–00–NIB–0744—Biogel, Orthopro, Overglove, Straw colored, Size 7″
NSN: 6515–00–NIB–0745—Biogel, Orthopro, Overglove, Straw colored, Size 7.5″
NSN: 6515–00–NIB–0746—Biogel, Orthopro, Overglove, Straw colored, Size 8″
NSN: 6515–00–NIB–0747—Biogel, Orthopro, Overglove, Straw colored, Size 8.5″
NSN: 6515–00–NIB–0748—Biogel, Orthopro, Overglove, Straw colored, Size 9″
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN
Contracting Activity: Department of Veterans Affairs, NAC, Hines, IL

Chipboard

NSN: 8135–00–782–3948
NSN: 8135–00–782–3951
NSN: 8135–00–290–0336
NSN: 8135–00–579–8457
NPA: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: General Services Administration, New York, NY

Services

Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, 1001 W. DeYoung Street, Marion, IL
NPA: The H Group, B.B.T. Inc., West Frankfurt, IL
Contracting Activity: Dept of the Army, W6QM MICC–ARCC NORTH, Fort McCoy, WI
Service Type/Locations: Facilities/Grounds Maintenance, Addicks Field Office and Compound Storage Yard, Barker Visitors Areas, Dams, Reservoirs & Related, 2000 Fort Point Road, Houston, TX
Facility and Grounds Maintenance Service, US Army Corps of Engineers, Wallisville Lake, 20020 IH–10 East Feeder Road, Wallisville, TX
Contracting Activity: Dept of the Army, W076 ENDIST GALVESTON, Galveston, TX
Grounds Maintenance Service, US Army Corps of Engineers, Jadwin Building, Fort Point Reservation, 2000 Fort Point Road, Galveston, TX
Contracting Activity: Dept of the Army, W076 ENDIST FT WORTH, Fort Worth, TX
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2014–21758 Filed 9–11–14; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. EDT, Wednesday, September 17, 2014.

PLACE: CFTC Headquarters Conference Center, Three Lafayette Centre, 1155 21st Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hold this meeting to consider rulemaking matters, including the adoption of a final rule and the issuance of a proposed rule. The agenda for this meeting is available to the public and posted on the Commission's Web site at *http://www.cftc.gov.* In the event that the time, date, or place of this meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: Christopher J. Kirkpatrick, Secretary of the Commission, 202–418–5964.

Christopher J. Kirkpatrick,
Secretary of the Commission.

[FR Doc. 2014–21940 Filed 9–10–14; 4:15 pm]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled National Evaluation of School Turnaround AmeriCorps for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Diana Epstein at 202–606–7564 or email to *depstein@cns.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.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

• 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;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose 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

A 60-day Notice requesting public comment was published in the **Federal Register** on June 27, 2014. This comment period ended August 26, 2014. No public comments were received from this Notice.

Description: The national evaluation of School Turnaround AmeriCorps will use a quasi-experimental design that compares schools affected by School Turnaround AmeriCorps (i.e., the treatment group) to a matched comparison group of low performing schools without the School Turnaround AmeriCorps initiative (i.e., the comparison group). This research design will attempt to isolate the effects of AmeriCorps members' service.

This is a new information collection request. Information will be collected from AmeriCorps grantee staff, AmeriCorps members, school leaders, teachers, and parents using online surveys and semi-structured interviews and focus groups conducted by telephone, online, and in person.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: National Evaluation of School Turnaround AmeriCorps.

OMB Number: TBD.

Agency Number: None.

Affected Public: AmeriCorps grantee staff, AmeriCorps members, school leaders, teachers, and parents.

Total Respondents: 1570. This is the number of unique individuals in the categories of grantee staff, AmeriCorps members, school leaders, parents, and teachers who will take the surveys and/or participate in interviews or focus groups.

Frequency: Some instruments will be administered twice per year, and some only once per year. Data collection will occur for two years. See charts below for details on respondents and frequency of data collection.

Average Time per Response: Averages 30 minutes.

Estimated Total Burden Hours: 2274 hours per year; 4548 total over 2 years.

Survey	AmeriCorps	Comparison	Pre/post?	Total
Grantee staff	13	0	No	13
AmeriCorps members	440	0	No	440
Principals	62	62	Yes	248
Teachers	348	348	Yes	1,392
	863	410		2,093

Unique respondents: 1,273.
Minutes: 125,580.
Hours: 2,093.

Interviews	AmeriCorps	Comparison	Pre/post?	Total
Grantee staff	13	0	Yes	26
AmeriCorps members	26	0	No	26
Principals	26	26	Yes	104
Teachers	26	26	No	52
Parents	50	0	No	50

Unique respondents: 193.
Minutes: 7,740.
Hours: 129.

Focus groups	AmeriCorps
Grantee staff	13
AmeriCorps members	39
Principals	13
Teachers	39

Unique respondents: 104.
Minutes: 3,120.
Hours: 52.
Total hours per year: 2,274.
Total hours 2 years: 4,548.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: September 8, 2014.

Stephen Plank,

Director, Office of Research and Evaluation.

[FR Doc. 2014–21777 Filed 9–11–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of altered and deleted systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), 5 U.S.C. 552a, the Chief Operating Officer for Federal Student Aid (FSA) of the U.S. Department of Education (the Department) publishes this notice to revise the system of records entitled ''Common Services for Borrowers'' (CSB) system (18–11–16), originally published in the **Federal Register** on January 23, 2006 (71 FR 3503).

The Department publishes this notice to revise the CSB system of records as a result of amendments to the Higher Education Act of 1965, as amended (HEA), made by the Higher Education Reconciliation Act of 2005 (HERA), the College Cost Reduction and Access Act of 2007 (CCRAA), the Higher Education Opportunity Act of 2008 (HEOA), and the Student Aid and Fiscal Responsibility Act of 2009 (SAFRA).

Because the following two systems of records have become duplicative of other systems of records and are no longer needed, the Department also deletes the title IV Program Files (18–11–05) system of records, originally published in the **Federal Register** on April 12, 1994 (59 FR 17351), republished on June 4, 1999 (64 FR 30106, 30163–66), and amended on December 27, 1999 (64 FR 72384, 72407), and the Student Financial Assistance Collection Files (18–11–07) system of records, originally published in the **Federal Register** on June 2, 1981 (46 FR 29596, 29649–29650), amended on December 9, 1983 (48 FR 55159), amended on June 18, 1984 (49 FR 24927), republished on June 4, 1999 (64 FR 30106, 30166–30169), and amended on December 27, 1999 (64 FR 72384, 72407).

DATES: Submit your comments on this notice of altered and deleted systems of records on or before October 14, 2014.

The Department has filed a report describing the altered system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 2, 2014. This altered system of records will become effective on the later date of: (1) The expiration of the 40-day period for OMB review on October 12, 2014, unless OMB waives 10 days of the 40–day review period for compelling reasons shown by the Department; or (2) October 14, 2014, unless the altered system of records notice needs to be changed as a result of public comment or OMB review. The Department will publish any changes to the altered system of records notice that result from public comment or OMB review.

ADDRESSES: Address all comments about this notice of altered and deleted systems of records to: Director, Program Management Services, Business Operations, Federal Student Aid, U.S. Department of Education, 830 First Street NE., Union Center Plaza (UCP), Room 64E1, Washington, DC 20202–5132. If you prefer to send comments by email, use the following address: *comments@ed.gov.*

You must include the term ''CSB comments'' in the subject line of your email.

During and after the comment period, you may inspect all public comments about this notice in Room 64D1, UCP, 830 First Street NE., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Eastern Standard Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will supply an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Director, Program Management Services, Business Operations, Federal Student Aid, U.S. Department of Education, UCP, 830 First Street NE., Room 64E1, Washington, DC 20202–5132. Telephone number: (202) 377–3676.

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

SUPPLEMENTARY INFORMATION:

Introduction

The CSB system of records covers records for all activities that the Department carries out with regard to making and servicing Federal title IV, HEA loans, and collecting or otherwise resolving obligations owed by an individual with respect to a Federal title IV, HEA loan or grant program. The CSB system contains records of an individual's Federal title IV, HEA loans or grants and of transactions performed by the Department to carry out the purposes of this notice.

Authority to collect data to make and service title IV, HEA loans, and to otherwise resolve obligations owed by an individual with respect to a Federal title IV, HEA grant program, is provided by titles IV–A, IV–B, IV–D, and IV–E of the HEA.

The Privacy Act (5 U.S.C. 552a(e)(4) and (11)) requires Federal agencies to publish in the **Federal Register** this notice of an altered system of records. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to records about individuals that contain individually identifying information and that are retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.''

Whenever the Department makes a significant change to an established system of records, the Privacy Act requires the Department to publish a notice of an altered system of records in the **Federal Register** and to prepare and send a report to the Chair of the Committee on Oversight and Government Reform of the House of Representatives, the Chair of the Committee on Homeland Security and Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, OMB. These reports are intended to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

A change to a system of records is considered to be a significant change that must be reported whenever an agency expands the types or categories of information maintained, significantly expands the number, types, or categories of individuals about whom records are maintained, changes the purpose for which the information is used, changes the equipment configuration in a way that creates substantially greater access to the records, or adds a routine use disclosure to the system. The CSB system of records was first published in the **Federal Register** on January 23, 2006 (71 FR 3503), and a number of changes are needed to update and accurately describe the current system of records.

The CSB system of records will facilitate the Secretary of Education's performance of statutory duties to make and service Federal title IV, HEA loans and grants under titles IV–A, IV–B, IV–D, and IV–E of the HEA that require:

(1) Verifying the identity of an individual;

(2) Determining program eligibility and benefits;

(3) Facilitating default reduction efforts by program participants;

(4) Enforcing the conditions or terms of a loan or grant;

(5) Making, servicing, collecting, assigning, adjusting, transferring, referring, or discharging a loan or collecting a grant obligation;

(6) Counseling a debtor in repayment efforts;

(7) Investigating possible fraud or abuse and verifying compliance with program regulations;

(8) Locating a delinquent or defaulted borrower or an individual obligated to repay a loan or grant;

(9) Preparing a debt for litigation, providing support services for litigation

on a debt, litigating a debt, or auditing the results of litigation on a debt;

(10) Preparing for, conducting, or enforcing a limitation, suspension, termination, or debarment action;

(11) Ensuring that program requirements are met by educational and financial institutions, Federal Loan Servicers [including Title IV Additional Servicers (TIVAS) and Not-for-Profit (NFP) Servicers], the Federal Perkins Loan Servicer, Private Collection Agencies (PCAs), and guaranty agencies;

(12) Verifying whether a debt qualifies for a discharge, cancellation, or forgiveness;

(13) Conducting credit checks or responding to inquiries or disputes arising from information on the debt already furnished to a credit-reporting agency;

(14) Investigating complaints, updating information, or correcting errors contained in Department records; and

(15) Refunding credit balances back to the individual or loan holder.

This notice expands the sections of the system notice entitled CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM and CATEGORIES OF RECORDS IN THE SYSTEM. In the CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM section, the system of records notice has been expanded to cover individuals who are obligated to repay a grant under the Academic Competitiveness Grant (ACG) Program, the National Science and Mathematics Access to Retain Talent (National SMART) Grant Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, and the Iraq and Afghanistan Service Grant Program. The notice also expands the categories of individuals covered by the system of records notice to include individuals who are eligible for Civil Legal Assistance Attorney Student Loan Repayment Program (CLAARP). The CSB system of records notice will also cover individuals who are employed full-time by a public service organization and eligible for Public Service Loan Forgiveness (PSLF).

In the CATEGORY OF RECORDS IN THE SYSTEM section, the notice identifies the underlying systems covered by the CSB system of records notice that the Department employs to make and service loans as well as to collect and resolve obligations that a borrower owes under the HEA. These systems are identified as the Direct Loan Consolidation System (DLCS), the Debt Management Collection System (DMCS), the Federal Perkins Loan Servicer System, the systems of the Federal Loan Servicers, the systems of the PCAs, and the Total and Permanent Disability (TPD) system. Further, the CSB system of records notice will also cover systems with information acquired from borrowers who qualify for the CLAARP or the PSLF Program.

This notice further expands the system's purposes. The terms ''transfer'' and ''refer'' were added to purpose (5) of the PURPOSES section of this notice. The term ''transfer'' pertains to the actions performed by the Federal Loan Servicers to transfer borrower loans among one another for the purposes of consolidating the borrower's account information. The term ''refer'' pertains to the process of referring a defaulted loan for collection. The term ''abuse'' has been included in purpose (7) of the PURPOSES section of this notice to ensure that the Department has the means to combat many types of improper behavior, not just fraudulent behavior. We altered purpose (11) of the PURPOSES section of this notice for the information maintained in this system relating to institutions participating in and administering programs under title IV of the HEA to ensure that the procured services of the Federal Loan Servicers and PCAs meet program requirements. The purpose of procuring the Federal Loan Servicers was to effectively manage the servicing and processing of the large number of Federal Family Education Loan Program loans purchased by the Department and the transition to 100 percent Direct Loans. The initial four Federal Loan Servicers were Nelnet Servicing, LLC; Great Lakes Education Loan Services, Inc.; Pennsylvania Higher Education Assistance Agency (PHEAA); and Sallie Mae, Inc. FSA subsequently also solicited NFP Servicers into the group of Federal Loan Servicers to support loan servicing. In addition, the Department has contracted with Educational Computer Systems, Inc. (ECSI) to service Federal Perkins Loans. Consequently, the notice also updates the paragraphs that describe the system locations of the Federal Loan Servicers, including the initial TIVAS and the more recently added NFP Servicers, as well as the locations of Federal Servicers, such as ECSI, and other Department contractors. The term ''forgiveness'' has been included in purpose (12) of the PURPOSES section of this notice to reference that a debt is eligible to be forgiven if it meets the program requirements for PSLF or CLAARP.

We are also adding two new purposes to this system of records. We are adding purpose (16) of the PURPOSES section to include that the Department uses this system to allow educational institutions, financial institutions, Federal Loan Servicers, the Federal Perkins Loan Servicer, PCAs, and guaranty agencies to report information to the Department on all aspects of loans and grants made under title IV of the HEA in uniform formats to permit the Department directly to compare data submitted to the Department by individual educational institutions, financial institutions, third-party servicers, guaranty agencies, Federal Loan Servicers, the Federal Perkins Loan Servicer, or PCAs.

We added purpose (17) to include that the Department uses this system to report to the Internal Revenue Service (IRS) information required by law to be reported, including, but not limited to, reports required by 26 U.S.C. 6050P and 6050S. Title 26 U.S.C. 6050P requires an entity that discharges some or all of a debt of $600 or more of principal to report to the IRS the amount of principal that it discharges. Title 26 U.S.C. 6050S requires ''any person, except as provided in regulations, which is engaged in a trade or business and, in the course of which, receives from any individual interest aggregating $600 or more for any calendar year on one or more qualified education loans'' to report to the individual and the IRS the aggregate amounts of payments over $600 of interest on qualified education loans during a calendar year.

The notice also proposes to make a number of changes which expand the current routine use disclosures in the system. First, programmatic routine use (1)(k) has been updated to include Federal Loan Servicers, the Federal Perkins Loan Servicer, and PCAs as entities that the Department may make disclosures to in order to ensure that they meet HEA program requirements.

Second, programmatic routine use (1)(l) has been updated to include forgiveness as a category for which a debt can qualify and to permit disclosure to the entities specified in this routine use in order for the Department to verify whether a debt qualifies for forgiveness.

Third, the Department is adding programmatic routine use (1)(p) to allow the Department to make disclosures to educational institutions, financial institutions, guaranty agencies, Federal Loan Servicers, the Federal Perkins Loan Servicer, and PCAs to allow them to report information to the Department on all aspects of loans and grants made under title IV of the HEA in uniform formats to permit the Department directly to compare data submitted to the Department by individual educational institutions, financial

institutions, third-party servicers, guaranty agencies, Federal Loan Servicers, the Federal Perkins Loan Servicer, or PCAs.

Fourth, we are also adding programmatic routine use (1)(q) to permit the Department to report information, including, but not limited to, reports required by 26 U.S.C. 6050P and 6050S, to the IRS because such reporting to the IRS is required by law.

Fifth, the Department has updated routine use (9) to allow the Department to disclose records to the Department of Justice (DOJ) or OMB to obtain advice on whether the Privacy Act requires access to particular records in this system.

Sixth, routine use (14) has been updated to specify that the Credit Reform Act (CRA) currently requires the Department to disclose to OMB data on lender interest benefits and special allowance payments, defaulted loan balances, and supplemental pre-claims assistance payments information.

Seventh, the Department has added a new routine use (15) ''*Disclosure in the Course of Responding to a Breach of Data''* to permit the Department to disclose records to appropriate agencies, entities, and persons to assist in connection with the Department's efforts to respond to a suspected or confirmed compromise of a system covered by this system of records notice and to prevent, minimize, or remedy any harm.

Eighth, the Department also has added new routine use (16) ''*Disclosure to Third Parties Through Computer Matching Programs,''* to permit the Department to make disclosures of information in this system to any third party through a computer matching program, which is conducted under a Computer Matching Agreement between the Department and the third party, and requires that the matching be conducted in compliance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching and Privacy Protection Amendments of 1990, and the OMB guidance interpreting these Acts. The purposes of these disclosures may be: (a) To establish or verify program eligibility and benefits under any Federal benefit programs; (b) to establish or verify compliance with program regulations or statutory requirements, such as to investigate possible fraud or abuse; and (c) to recoup payments or delinquent debts under any Federal benefit programs, such as to locate or take legal action against a delinquent or defaulted debtor.

Ninth, the Department also has added new routine use (17) ''*Disclosure of Information to the U.S. Department of the Treasury,''* to permit the Department to make disclosures of any information in this system to the U.S. Department of the Treasury and its designated ''agents,'' State agencies, and contractors whether or not the disclosure constitutes a computer matching program for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds.

Finally, the RETRIEVABILITY section has been updated to include the data elements that are used to retrieve the records of individuals pertaining to title IV, HEA loans and grants in this system.

Collectively, these revisions will enhance the ability of the Secretary to collect and maintain information on Federal title IV, HEA loans or grants repayment obligations made, insured, guaranteed, or arising under titles IV–A, IV–B, IV–D, and IV–E of the HEA; and to otherwise resolve obligations owed by an individual with respect to a loan or grant program authorized by the HEA.

Accessible Format: Individuals with disabilities can obtain this document in an alternative format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under this section.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 2, 2014.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

For the reasons discussed in the introduction, the Chief Operating Officer of Federal Student Aid (FSA), U.S. Department of Education (Department), deletes and alters the following systems of records to read as follows:

DELETED SYSTEMS:

SYSTEM NUMBER AND SYSTEM NAME:

- 18–11–05 Title IV Program Files, originally published in the **Federal Register** on April 12, 1994 (59 FR 17351), republished on June 4, 1999 (64 FR 30106, 30163–66), and amended on December 27, 1999 (64 FR 72384, 72407); and
- 18–11–07 Student Financial Assistance Collection Files, originally published in the **Federal Register** on June 2, 1981 (46 FR 29596, 29649–29650), amended on December 9, 1983 (48 FR 55159), amended on June 18, 1984 (49 FR 24927), republished on June 4, 1999 (64 FR 30106, 30166–30169), and amended on December 27, 1999 (64 FR 72384, 72407).

ALTERED SYSTEM:

SYSTEM NUMBER: 18–11–16

SYSTEM NAME:

Common Services for Borrowers (CSB).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Virtual Data Center (VDC), Dell Systems, 2300 West Plano Parkway, Plano, TX 75075–8427.

U.S. Department of Education, Federal Student Aid, 830 First Street NE., Union Center Plaza (UCP), Washington, DC 20202–5132.

See Appendix II to this notice for the name and location of additional Department locations as well as those of Department contractors with access to this system of records.

Federal Loan Servicers:

- Great Lakes Educational Loan Services, Inc., 2401 International Lane, Madison, WI 53704–3121;
- Nelnet Servicing LLC, 1001 Fort Crook Road N., Suite 132, Bellevue, NE 68005, 6420 Southpoint Parkway, Jacksonville, FL 32216–8009 and 3015 South Parker Road, Aurora, CO 80014–2906;
- Pennsylvania Higher Education Assistance Agency (PHEAA), 1200 North 7th Street, Harrisburg, PA 17102–1419; and
- Sallie Mae, 11100 USA Parkway, Fishers, IN 46037–9203.

The Department contracts with the aforementioned four Federal Loan Servicers group to effectively manage the servicing and processing of the large number of Federal Family Education Loan Program loans purchased by the Department and as a result of the transition to 100 percent Direct Loans.

The Department also contracts with Not-for-Profit (NFP) Servicers, which also serve as Federal Loan Servicers to support loan servicing. See Appendix II to this notice for the name and location of each NFP Servicer with which the Department contracts.

In addition to the Federal Loan Servicers listed above, the Department contracts with Educational Computer Systems, Inc. (ECSI), 181 Montour Run Road, Coraopolis, PA 15108–9408, to service Federal Perkins Loans.

The Department also contracts with Private Collection Agencies (PCAs) to collect delinquent or defaulted loans. See Appendix II to this notice for the name and location of each PCA with which the Department contracts.

Other contractors that the Department contracts with to maintain this system of records are found in Appendix II to this notice along with the name of the system that they support.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The CSB system contains records on those individuals who received a loan or who are otherwise obligated to repay a loan or grant made under title IV of the Higher Education Act of 1965, as amended (HEA), held and collected by the Department, which was made under: (1) The Federal Family Education Loan (FFEL) Program, including Stafford Loans, Federal Insured Student Loans (FISL), Supplemental Loans for Students (SLS), PLUS Loans (formerly Parental Loans for Undergraduate Students), and Consolidation Loans; (2) the William D. Ford Federal Direct Loan (Direct Loan) Program, including Federal Direct Unsubsidized and Subsidized Stafford/Ford Loans, Federal Direct Consolidation Loans, and Federal Direct PLUS Loans; (3) the Federal Perkins Loan Program; (4) the Federal Pell Grant Program; (5) the Federal Supplemental Education Opportunity Grant (FSEOG) Program; (6) the Leveraging Educational Assistance Partnership (LEAP) Program; (7) the Special Leveraging Educational Assistance Partnership (SLEAP) Program; (8) Academic Competiveness Grant (ACG) Program; (9) National Science and Mathematics Access to Retain Talent (SMART) Grant Program; (10) Teach Education Assistance for College and Higher Education (TEACH) Grant Program; (11) the Iraq and Afghanistan Service Grant Program; (12) the Civil Legal Assistance Attorney Student Loan Repayment Program (CLAARP); and (13) the Public Service Loan Forgiveness (PSLF) Program.

This system also contains records on individuals who apply for, but do not receive a Direct Loan, as well as individuals identified by the borrower or recipient of the Federal title IV, HEA loan or grant as references or as household members whose income and expenses are considered in connection with the making or the enforcement of the grant or loan.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records covers the records in all systems used by the Department to carry out activities with regard to making and servicing loans, including collecting or otherwise resolving obligations owed by an individual under title IV of the HEA. The following systems are covered by this system of records notice: Direct Loan Consolidation System (DLCS), Debt Management Collection System (DMCS), CLAARP system, PSLF system, systems operated by the Federal Loan Servicers to accomplish the purpose(s) of this system of records, systems operated by the Federal Perkins Loan Program Servicer to accomplish the purpose(s) of this system of records, systems operated by the PCAs to accomplish the purpose(s) of this system of records, and Total and Permanent Disability (TPD) system.

This system of records contains the employment information, educational status, family income, Social Security number (SSN), address(es), email address(es), and telephone number(s) of the individuals obligated on the debt or whose income and expenses are included in a financial statement submitted by the individual. This system also contains records including, but not limited to, the application for, agreement to repay, and disbursements on the loan, and loan guaranty, if any; the repayment history, including deferments and forbearances; claims by lenders on the loan guaranty; and cancellation or discharges on grounds of qualifying service, bankruptcy discharge, disability (including medical records submitted to support application for discharge by reason of disability), death, or other statutory or regulatory grounds for relief.

Additionally, for title IV, HEA grant overpayments, the system contains records about the amount disbursed, the school that disbursed the grant, and the basis for overpayment; for all debts, the system contains demographic, employment, and other data on the individuals obligated on the debt or provided as references by the obligor, and the collection actions taken by any holder, including write-off amounts and compromise amounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Titles IV–A, IV–B, IV–D, and IV–E of the HEA.

PURPOSES:

The information maintained in this system of records is used for the following purposes:

(1) To verify the identity of an individual;

(2) To determine program eligibility and benefits;

(3) To facilitate default reduction efforts by program participants;

(4) To enforce the conditions or terms of a loan or grant;

(5) To make, service, collect, assign, adjust, transfer, refer, or discharge a loan or collect a grant obligation;

(6) To counsel a debtor in repayment efforts;

(7) To investigate possible fraud or abuse or verify compliance with program regulations;

(8) To locate a delinquent or defaulted borrower, or an individual obligated to repay a loan or grant;

(9) To prepare a debt for litigation, provide support services for litigation on a debt, litigate a debt, or audit the results of litigation on a debt;

(10) To prepare for, conduct, or enforce a limitation, suspension, termination, or debarment action;

(11) To ensure that program requirements are met by educational and financial institutions, Federal Loan Servicers, the Federal Perkins Loan Servicer, PCAs, and guaranty agencies;

(12) To verify whether a debt qualifies for discharge, cancellation, or forgiveness;

(13) To conduct credit checks or respond to inquiries or disputes arising from information on the debt already furnished to a credit-reporting agency;

(14) To investigate complaints, update information, or correct errors contained in Department records;

(15) To refund credit balances to the individual or loan holder;

(16) To allow educational institutions, financial institutions, Federal Loan Servicers, the Federal Perkins Loan Servicer, PCAs, and guaranty agencies to report information to the Department on all aspects of loans and grants made under title IV of the HEA in uniform formats to permit the Department directly to compare data submitted to the Department by individual educational institutions, financial institutions, third-party servicers, guaranty agencies, Federal Loan Servicers, the Federal Perkins Loan Servicer, or PCAs; and

(17) To report to the Internal Revenue Service (IRS) information required by law to be reported, including, but not

limited to, reports required by 26 U.S.C. 6050P and 6050S.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the information in the record was collected. These disclosures may be made on a case-by-case basis, or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement. Return information that the Department obtains from the IRS (i.e., taxpayer mailing address) per a computer matching program (discussed in Appendix I to this notice) under the authority of 26 U.S.C. 6103(m)(2) or (m)(4) may be disclosed only as authorized by 26 U.S.C. 6103.

(1) *Program Disclosures.* The Department may disclose records for the following program purposes:

(a) To verify the identity of the individual whom records indicate has applied for or received the loan or grant, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; to adjudicative bodies; and to the individual whom the records identify as the party obligated to repay the debt;

(b) To determine program eligibility and benefits, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(c) To facilitate default reduction efforts by program participants, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to consumer reporting agencies; and to adjudicative bodies;

(d) To enforce the conditions or terms of the loan or grant, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(e) To permit making, servicing, collecting, assigning, adjusting, transferring, referring, or discharging a loan or collecting a grant obligation, disclosures may be made to guaranty agencies, educational institutions, or financial institutions that made, held, serviced, or have been assigned the debt, and their authorized representatives; to a party identified by the debtor as willing to advance funds to repay the debt; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(f) To counsel a debtor in repayment efforts, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; and to Federal, State, or local agencies, and their authorized representatives;

(g) To investigate possible fraud or abuse or verify compliance with program regulations, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(h) To locate a delinquent or defaulted borrower, or an individual obligated to repay a loan or grant, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, business and personal associates, and present and former employers; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(i) To prepare a debt for litigation, to provide support services for litigation on a debt, to litigate a debt, or to audit the results of litigation on a debt, disclosures may be made to guaranty agencies and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; and to adjudicative bodies;

(j) To prepare for, conduct, or enforce a limitation, suspension, and termination or a debarment action, disclosures may be made to guaranty agencies, educational or financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; and to adjudicative bodies;

(k) To ensure that HEA program requirements are met by educational and financial institutions, guaranty agencies, Federal Loan Servicers, the Federal Perkins Loan Servicer, and PCAs, disclosures may be made to guaranty agencies, educational or financial institutions, and their authorized representatives, and to auditors engaged to conduct an audit of a guaranty agency or an educational or financial institution; to Federal, State, or local agencies, their authorized representatives, or accrediting agencies; and to adjudicative bodies;

(l) To verify whether a debt qualifies for discharge, forgiveness, or cancellation, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; to consumer reporting agencies; and to adjudicative bodies;

(m) To conduct credit checks or to respond to inquiries or disputes arising from information on the debt already furnished to a credit reporting agency, disclosures may be made to credit reporting agencies; to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; and to adjudicative bodies;

(n) To investigate complaints or to update information or correct errors contained in Department records, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; to creditors; to credit

reporting agencies; and to adjudicative bodies;

(o) To refund credit balances that are processed through the Department's systems, as well as the U.S. Department of the Treasury's (Treasury's) payment applications, to the individual or loan holder, disclosures may be made to guaranty agencies, educational and financial institutions, and their authorized representatives; to Federal, State, or local agencies, and their authorized representatives; to private parties, such as relatives, present and former employers, and business and personal associates; and to creditors;

(p) To allow the reporting of information to the Department on all aspects of loans and grants made under title IV of the HEA in uniform formats and to permit the Department directly to compare data submitted to the Department by individual educational institutions, financial institutions, third-party servicers, guaranty agencies, Federal Loan Servicers, the Federal Perkins Loan Servicer, or PCAs, disclosures may be made to educational institutions, financial institutions, guaranty agencies, Federal Loan Servicers, the Federal Perkins Loan Servicer, and PCAs; and

(q) To report information required by law to be reported, including, but not limited to, reports required by 26 U.S.C. 6050P and 6050S, disclosures may be made to the IRS.

(2) *Feasibility Study Disclosure.* The Department may disclose information from this system of records to other Federal agencies, and to guaranty agencies and to their authorized representatives, to determine whether computer matching programs should be conducted by the Department for purposes such as to locate a delinquent or defaulted debtor or to verify compliance with program regulations.

(3) *Disclosure for Use by Other Law Enforcement Agencies.* The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(4) *Enforcement Disclosure.* In the event that information in this system of records indicates, either alone or in connection with other information, a violation or potential violation of any applicable statutory, regulatory, or legally binding requirement, the Department may disclose the relevant records to an entity charged with the responsibility for investigating or enforcing those violations or potential violations.

(5) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in judicial or administrative litigation or ADR, or has an interest in such litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department or any of its components;

(ii) Any Department employee in his or her official capacity;

(iii) Any Department employee in his or her individual capacity where the Department of Justice (DOJ) has been requested to or agrees to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the Department has agreed to represent the employee; and

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear or to an individual or an entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, Counsel, Representatives, and Witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(6) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(7) *Employee Grievance, Complaint, or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action, the Department may disclose the record in this system of records in the course of investigation, fact-finding, or adjudication to any witness, designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(8) *Labor Organization Disclosure.* The Department may disclose a record from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(9) *Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or to the Office of Management and Budget (OMB) if the Department determines that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(10) *Disclosure to the DOJ.* The Department may disclose records to the DOJ, or the authorized representative of DOJ, to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(11) *Contracting Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before

entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) of the Privacy Act with respect to the records in the system.

(12) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(13) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a Member of Congress in response to an inquiry from the Member made at the written request of that individual whose records are being disclosed. The Member's right to the information is no greater than the right of the individual who requested the inquiry.

(14) *Disclosure to OMB for Credit Reform Act (CRA) Support.* The Department may disclose records to OMB as necessary to fulfill CRA requirements. These requirements currently include transfer of data on lender interest benefits and special allowance payments, defaulted loan balances, and supplemental pre-claims assistance payments information.

(15) *Disclosure in the Course of Responding to a Breach of Data.* The Department may disclose records to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in a system covered by this system of records notice has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other system or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(16) *Disclosure to Third Parties through Computer Matching Programs.* Unless otherwise prohibited by other laws, any information from this system of records, including personal information obtained from other agencies through computer matching programs, may be disclosed to any third party through a computer matching program, which is conducted under a Computer Matching Agreement between the Department and the third party, and requires that the matching be conducted in compliance with the requirements of the Privacy Act. Purposes of these disclosures may be: (a) To establish or verify program eligibility and benefits, (b) to establish or verify compliance with program regulations or statutory requirements, such as to investigate possible fraud or abuse; and (c) to recoup payments or delinquent debts under any Federal benefit programs, such as to locate or take legal action against a delinquent or defaulted debtor. Appendix I to this notice includes a listing of the computer matching programs that the Department currently engages in or has recently engaged in with respect to this system of records.

(17) *Disclosure of Information to Treasury.* The Department may disclose records of this system to (a) a Federal or State agency, its employees, agents (including contractors of its agents), or contractors, or (b) a fiscal or financial agent designated by the Treasury, including employees, agents, or contractors of such agent, for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a State in a State-administered, Federally funded program; and disclosure may be made to conduct computerized comparisons for this purpose.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): The Department may disclose to a consumer reporting agency information regarding a valid overdue claim of the Department; such information is limited to: (1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the individual responsible for the claim; (2) the amount, status, and history of the claim; and (3) the program under which the claim arose. The Department may disclose the information specified in this paragraph under 5 U.S.C. 552a(b)(12) and the procedures contained in 31 U.S.C. 3711(e). A consumer reporting agency to which these disclosures may be made is defined in 15 U.S.C. 1681a(f) and 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in hardcopy, microfilm, magnetic storage, and optical storage media, such as tape, disk, etc.

RETRIEVABILITY:

Records in this system pertaining to a title IV, HEA loan borrower or grant recipient are retrieved by a single data element or a combination of the following data elements to include the SSN, name, address, randomly generated number, debt number, phone number, debt type reference, debt type extension debt number, commercial name, commercial contact name, legacy ID, driver's license number, American Bankers Association (ABA) routing number, bankruptcy docket number, debt placement date, debt user defined page (UDP), email address, last worked date, payment additional extension reference ID, payment extension reference ID, tag short name, total balance, credit bureau legacy ID, debt type group short name, debt type short name, department name, institution account number, judgment docket number, license-issuing State, next scheduled payment amount, next scheduled payment date, office name, original debt type name, PCA group short name, and PCA short name.

SAFEGUARDS:

All physical access to the Department's site, and to the sites of the Federal Loan Servicers, PCAs, the Federal Perkins Loan Servicer, and other contractors listed in Appendix II to this notice, where this system of records is maintained, is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge.

In accordance with the Department's Administrative Communications System Directive OM: 5–101 entitled ''Contractor Employee Personnel Security Screenings,'' all contract and Department personnel who have facility access and system access are required to undergo a security clearance investigation. Individuals requiring access to Privacy Act data are required to hold, at a minimum, a moderate-risk security clearance level. These individuals are required to undergo periodic screening at five-year intervals.

In addition to conducting security clearances, contract and Department

employees are required to complete security awareness training on an annual basis. Annual security awareness training is required to ensure that contract and Department users are appropriately trained in safeguarding Privacy Act data in accordance with OMB Circular No. A–130, Appendix III.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need-to-know'' basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user identification and password. The Department's FSA Information Security and Privacy Policy requires the enforcement of a complex password policy. In addition to the enforcement of a complex password policy, users are required to change their password at least every 60 to 90 days in accordance with the Department's Information Technology standards.

At the system locations of the Federal Loan Servicers, PCAs, the Federal Perkins Loan Servicer, and other contractors, as listed in Appendix II entitled ''Additional System Locations,'' additional physical security measures are in place and access is monitored 24 hours per day, 7 days a week.

RETENTION AND DISPOSAL:

In accordance with the Department's record retention and disposition schedule, records for Pell Grant Program awards are retained for fifteen years after final payment or audit, whichever is sooner, and thereafter destroyed. Insured loans are retained for three years after repayment or cancellation of the loan and thereafter destroyed. The Department will work with the National Archives and Records Administration to develop a disposition schedule for the other records in this system of records. The records will be maintained until such a schedule has been established.

SYSTEM MANAGER AND ADDRESS:

Director, Program Management Services, Business Operations, Federal Student Aid, U.S. Department of Education, 830 First Street NE., Room 64E1, UCP, Washington, DC 20202–5132.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in this system of records, provide the system manager with your name, date of birth, and SSN. Requests must meet the requirements of the regulations in 34 CFR 5b.5 and 5b.7, including proof of identity.

RECORD ACCESS PROCEDURES:

If you wish to gain access to a record in this system, provide the system manager with your name, date of birth, and SSN. Requests by an individual for access to a record must meet the requirements of the regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record in this system of records, contact the system manager with your name, date of birth, and SSN; identify the specific items to be changed; and provide a written justification for the change. Requests to amend a record must meet the requirements of the regulations in 34 CFR 5b.7.

RECORD SOURCE CATEGORIES:

The system includes information that the Department obtains from applicants and those individuals and their families who received, or who are otherwise obligated to repay, a loan or grant held and collected by the Department. The Department also obtains information from Federal Loan Servicers, PCAs, the Federal Perkins Loan Servicer, references, guaranty agencies, educational and financial institutions and their authorized representatives, and Federal, State, and local agencies and their authorized representatives; private parties, such as relatives and business and personal associates; present and former employers; creditors; consumer reporting agencies; and adjudicative bodies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

APPENDIX I TO 18–11–16 COMPUTER MATCHING PROGRAMS IN WHICH THE DEPARTMENT CURRENTLY ENGAGES OR HAS RECENTLY ENGAGED WITH RESPECT TO THIS SYSTEM:

(1) The Department is performing, or has recently engaged in, computer matching programs involving a computerized comparison between this system of records and systems of records maintained by the following Federal agencies:

(a) The U.S. Department of the Treasury, IRS [matching notice last published on May 31, 2012 (77 FR 32085–32086)], as authorized under section 6103(m)(2) and (m)(4) of the Internal Revenue Code (26 U.S.C. 6103(m)(2) and (m)(4)), to obtain taxpayer mailing addresses for use in locating individuals to collect or compromise Federal claims, in accordance with 31 U.S.C. 3711, 3717, and 3718, and in locating individuals who received overpayments of grants made under subpart 1 of part A of title IV of the HEA or who defaulted on loans made under part B, D, or E of title IV of the HEA;

(b) The Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS) [matching notice last published on July 5, 2011 (76 FR 39119–39120)] to allow program agencies to prescreen applicants for loans made or loans guaranteed by the Federal government to determine if the applicant is delinquent or has defaulted on a debt owed to, or insured by, the Federal government; and

(c) The Department of Health and Human Services' National Directory of New Hires Data Base (NDNH) [matching notice last published on May 9, 2006 (71 FR 26934–26935)], as authorized under Section 453(j)(6) of the Social Security Act (42 U.S.C. 653(j)(6)), to obtain employment-related and address information on individuals who have defaulted on a loan made under title IV of the HEA or have an obligation to refund a grant overpayment awarded under title IV of the HEA.

These computer matching programs are conducted in compliance with the requirements of the Privacy Act, including publishing in the **Federal Register** a notice describing the new or altered matching program and the entry into a Computer Matching Agreement between the Department and the Federal agencies listed above, which are approved by the Data Integrity Boards of the Department and the Federal agency with which the Department conducts the computer matching program.

APPENDIX II TO 18–11–16 ADDITIONAL SYSTEM LOCATIONS—THE DEPARTMENT AND ITS CONTRACTORS:

U.S. Department of Education, 50 Beale Street, San Francisco, CA 94105.

U.S. Department of Education, 500 West Madison Street, Chicago, IL 60661.

U.S. Department of Education, 61 Forsyth Street, Atlanta, GA 30303.

Pearson Government Solutions, 3833 Greenway Drive, Lawrence, KS 66046–5441 (Department contractor—DMCS).

Pearson Government Solutions, 2400 Oakdale Boulevard, Coralville, IA 52241 (Department contractor—DMCS).

Maximus Federal Services, Inc.: 5202 Presidents Court Frederick, MD 21703; 11400 Westmoor Circle, Westminster, CO 80021; 9651 Hornbaker Road, Manassas, VA 20109 (Department contractor—DMCS).

HP Enterprise Services, 5th Floor, 10100 Linn Station Road, Louisville, KY 40223 (Department contractor—DLCS).

HP Enterprise Services, 100 Capitol Commerce Center Boulevard,

Montgomery, AL 36117 (Department contractor—DLCS).

HP Enterprise Services, 6901 Windcrest Drive, Plano, TX 75024 (Department contractor—DLCS).

Nelnet Servicing LLC, 1001 Fort Crook Road N., Suite 132, Bellevue, NE 68005 (Department contractor—TPD).

Xerox Corporation

Xerox Corporation, 2277 East 220th Street, Long Beach, CA 90810 (Xerox Commercial office).

Xerox Corporation, 2505 S. Finley Road, Suite 100, Lombard, IL 60148–4866 (Xerox Commercial office).

Xerox Corporation, 12410 Milestone Center Drive, Germantown, MD 20876 (Department Contractor—DMCS).

Xerox Corporation, 501 Bleecker Street, Utica, NY 13501 (Department contractor—DMCS).

Xerox Corporation, 6201 I–30, Greenville, TX 75403 (Department contractor—DMCS).

Xerox Corporation, 2828 N. Haskell Avenue, Building 5, 2nd Floor, Dallas, TX 75204 (Department contractor—DMCS).

ABR Services, Inc., 3480 Catterton Place, Waldorf, MD 20602 (sub-contractor—Fulfillment Services for DMCS mailings).

Not-For-Profit (NFP) Servicers

• Missouri Higher Education Loan Authority (MOHELA): 633 Spirit Drive, Chesterfield, MO 63005; 400 East Walnut Street, Columbia, MO 65201; 1001 N. 6th Street, Harrisburg, PA 17102; 300 Long Meadow Road, Sterling Forest, NY 10979.

• Education Servicers of America, Inc. (ESA)/Edfinancial: 298 N. Seven Oaks Drive, Knoxville, TN 37922; 120 N. Seven Oaks Drive, Knoxville, TN 37922; 5600 United Drive, Smyrna, GA 30082; 1001 Fort Crook Rd. N., Suite 132, Bellevue, NE 68005–4247; 700 East 54th St. North, Suite 200, Sioux Falls, SD 57104; 13271 North Promenade Blvd., Stafford, TX 77477–3957; 2307 Directors Row, Indianapolis, IN 46241.

• Utah Higher Education Assistance Authority (UHEAA)/Cornerstone Education Loan Services: 60 S. 400 W., Board Of Regents' Building, Gateway Two, Salt Lake City, UT 84101–1284; 350 S. 900 W., Richfield, UT 84701; 6279 East Little Cottonwood Road, Sandy, UT 84092; 1001 N. 6th Street, Harrisburg, PA 17102.

• Oklahoma Student Loan Authority (OSLA): 525 Central Park Drive, Suite 600, Oklahoma City, OK 73154; 7499 East Paradise Lane Suite 108, Scottsdale, AZ 85260; 11300 Partnership Drive #C, Oklahoma City, OK 73013; 1001 Fort Crook Road N., Suite 132, Bellevue, NE 68005; 700 East 54th St. North, Suite 200, Sioux Falls, SD 57104; 13100 North Promenade Blvd., Stafford, TX 77477; 1601 Leavenworth St., Omaha, NE 68102.

• Vermont Student Assistance Corporation (VSAC): 10 East Allen St., Winooski, VT 05404; 1001 Fort Crook Rd. N., Suite 132, Bellevue, NE 68005–4247; 700 East 54th St. North, Suite 200, Sioux Falls, SD 57104.

• ISL Service Corporation/Aspire Resources Inc.: 6775 Vista Dr., West Des Moines, IA 50266; 6955 Vista Dr., West Des Moines, IA 50266; 3096 104th St., Urbandale, IA 50322; 1870 East Euclid Avenue, Des Moines, IA 50313; 1435 Northridge Cr. NE., Altoona, IA 50009; 1001 N. 6th Street, Harrisburg, PA 17102; 300 Long Meadow Road, Sterling Forest, NY 10979.

• New Hampshire Higher Education Loan Corporation (NHHELCO)/Granite State Management & Resources (GSM&R): 3 and 4 Barrell Court, Concord, NH 03301; 401 N. Broad St., Suite 600, Philadelphia, PA 19108; 21 Terry Ave., Burlington, MA 01803; 1001 Fort Crook Rd. N., Suite 132, Bellevue, NE 68005–4247; 700 East 54th St. North, Suite 200, Sioux Falls, SD 57104; 13100 North Promenade Boulevard, Stafford, TX 77477; 1601 Leavenworth St., Omaha, NE 68102.

• South Carolina Student Loan Corporation: 16 Berryhill Rd., Ste. 121, Columbia, SC 29210; 401 North Broad St., Philadelphia, PA 19108; 2400 Reynolda Rd., Winston-Salem, NC 27106.

• Tru Student, Inc.: 2500 Broadway, Helena, MT 59601; 680 E. Swedesford Road, Wayne, PA 19087; 1424 National Avenue, Helena, MT 59601; 1700 National Avenue, Helena, MT 59601; 1001 N. 6th Street, Harrisburg, PA 17102; 300 Long Meadow Road, Sterling Forest, NY 10979.

• Kentucky Higher Education Student Loan Corporation (KHESLC): 10180 Linn Station Road, Louisville, KY 40223; 2400 Reynolda Rd., Winston-Salem NC 27106; 6825 Pine Street, Omaha, NE 68106; 1001 Fort Crook Road N., Suite 132, Bellevue, NE 68005–4247.

• College Foundation, Inc.: 2917 Highwoods Boulevard, Raleigh, NC 27604; 3120 Poplarwood Court, Raleigh, NC 27604; 924 Ellis Road, Durham, NC 27703; 2400 Reynolda Road, Winston-Salem, NC 27106.

• Council for South Texas Economic Progress (COSTEP): 2540 W. Trenton Rd., Edinburg, TX 78539; 1044 Liberty Park Drive, Austin, TX 78746; 2400 Reynolda Rd., Winston-Salem, NC 27106.

• Georgia Student Finance Authority: 2082 East Exchange Place, Tucker, Georgia 30084; 401 North Broad Street, Philadelphia, PA 19130; 5600 United Drive, Smyrna, GA 30082; 2400 Reynolda Road, Winston-Salem, NC 27106.

• New Mexico Educational Assistance Foundation: 7400 Tiburon NE., Albuquerque, NM 87109; 123 Central Ave NW., Albuquerque, NM 87102; 1200 North Seventh Street, Harrisburg, PA 17102–1444; 300 Long Meadow Lane, Sterling Forest, NY 10979.

• Connecticut (Campus Partners): 2400 Reynolda Road, Winston-Salem, NC 27106; 8906 Two Notch Road, Columbia, SC 29223; 10180 Linn Station Road, Suite C200, Louisville, KY 40223; 2917 Highwoods Blvd., Raleigh, NC 27629; 1001 Fort Crook Road North, Suite 132, Bellevue, NE 68005; 11425 South 84th Street, Papillion, NE 68046; 20441 Century Blvd., Germantown, MD 20874; 400 Perimeter Park Drive, Morrisville, NC 27560; 1600 Malone Street, Millville, NJ 08332; 123 Wyoming Avenue, Scranton, PA 18503.

Private Collection Agencies (PCAs)

• Collecto, Inc. Dba EOS CCA: 700 Longwater Drive, Norwell, MA 02061.

• GC Services: 4326 N. Broadway Northgate Plaza, Knoxville, TN 37917.

• Allied Interstate: 335 Madison Avenue, 27th floor, New York, NY 10017.

• The CBE Group, Inc.: 1309 Technology Parkway, Cedar Falls, IA 50613.

• Diversified Collection Service (DCS): 333 North Canyons Parkway, Suite 100, Livermore, California 94551.

• Financial Asset Management Systems, Inc. (FAMS): 1967 Lakeside Parkway, Suite 402, Tucker, GA 30084.

• NCO Financial Systems, Inc.: 507 Prudential Road, Horsham, PA 19044.

• Pioneer Credit Recovery, Inc.: 26 Edward Street, Arcade, NY 14009.

• Account Control Technology, Inc.: 6918 Owensmouth Avenue, Canoga Park, CA 91303.

• Van Ru Credit Corporation: 1350 E. Touhy Avenue, Suite 300E, Des Plaines, IL 60018.

• Progressive Financial Services: 1510 Chester Pike Suite 250, Eddystone, PA 19022.

• West Asset Management Enterprises, Inc.: 2221 New Market Parkway, Suite 120, Marietta, GA 30067.

• Premiere Credit of North America: 2002 Wellesley Boulevard, Suite 100, Indianapolis, IN 46219.

• ConServe: 200 CrossKeys Office Park, Fairport, NY 14450.

• Financial Management Systems (FMS): 1000 E. Woodfield Road, Suite 102, Schaumburg, IL 60173–4728.
• Collection Technology, Inc.: 1200 Corporate Center Drive, Suite 325, Monterey Park, CA 91754.
• Enterprise Recovery Systems, Inc. (ERS): 2400 S. Wolf Road, Suite 200, Westchester, IL 60154.
• Windham Professionals, Inc.: 380 Main Street, Salem, NH 03079.
• Delta Management Associates, Inc.: 100 Everett Avenue Suite 6, Chelsea, MA 02150.
• Immediate Credit Recovery, Inc.: 169 Myers Corners Road Suite 110, Wappingers Falls, NY 12590.
• National Recoveries: 14735 Hwy. 65, Ham Lake, MN 55403.
• Coast Professional, Inc.: 214 Expo Circle, West Monroe, LA 71292.

[FR Doc. 2014–21792 Filed 9–11–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Legal Collection, OMB Control Number 1910–0800. The proposed collection will enable DOE to continue to maintain DOE control and oversight of DOE contractor's invention reporting and related matters.

DATES: Comments regarding this collection must be received on or before October 14, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to the

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503,

and to,

John T. Lucas, U.S. Department of Energy, Washington, DC 20585, (202) 586–2802 (telephone), (202) 586–2805 (fax).

FOR FURTHER INFORMATION CONTACT: John T. Lucas, U.S. Department of Energy, Washington, DC 20585; (202) 586–2802 (telephone); (202) 586–2805 (fax); *john.t.lucas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–0800; (2) Information Collection Request Title: Legal Collections; (3) Type of Request: Renewal; (4) Purpose: To continue to maintain DOE control and oversight of DOE and its contractor's invention reporting and related matters; (5) Annual Estimated Number of Respondents: 1332; (6) Annual Estimated Number of Total Responses: 1332; (7) Annual Estimated Number of Burden Hours: 10281; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $771,000.00.

Statutory Authority: 42 U.S.C. 5908(a), (b) and (c); 10 CFR part 781; 10 CFR part 784.

Issued in Washington, DC, on September 8, 2014.

John T. Lucas,

Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy.

[FR Doc. 2014–21836 Filed 9–11–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Data Privacy and the Smart Grid: A Voluntary Code of Conduct

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Request for public comment.

SUMMARY: The Department of Energy (DOE) invites public comment on a draft Voluntary Code of Conduct that addresses data privacy surrounding smart grid technologies. The document is available for a 30 day comment period at *https://www.smartgrid.gov/sites/default/files/VCC_principles_2014_08_12_final_draft.pdf.*

DATES: Comments must be received on or before October 14, 2014.

ADDRESSES: Written comments may be submitted to Eric Lightner, Director, Federal Smart Grid Task Force, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Email: *VCC-Privacy@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Eric Lightner, Director, Federal Smart Grid Task Force, Office of Electricity Delivery and Energy Reliability, U. S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 at *VCC-Privacy@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 31, 2012, U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability (DOE OE) hosted the Smart Grid Privacy Workshop to facilitate a dialog among key industry stakeholders. In addition, on February 23, 2012, the White House released the report, *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (*Privacy Blueprint*). The Privacy Blueprint outlines a multi-stakeholder process for developing legally enforceable voluntary codes of conduct to help instill consumer confidence.

In response to workshop findings and in support of the Privacy Blueprint, DOE OE and the Federal Smart Grid Task Force have facilitated a multi-stakeholder process to develop a Voluntary Code of Conduct (VCC) for utilities and third parties providing consumer energy use services. The resulting draft VCC addresses privacy issues as they relate to data enabled by smart grid technologies.

The DOE, through a notice published in **Federal Register** on February 11, 2013 (78 FR 9678), requested energy industry stakeholders to participate in the VCC multi-stakeholder process by attending open meetings and participating in work group activities to draft the VCC principles. The draft VCC, which is now available for public comment, is a result of those meetings and work groups over the past 18 months. The primary goal of the VCC is to provide principles of conduct for voluntary adoption by energy utilities and third parties.

Authority: Energy Independence and Security Act of 2007, Title XIII.

Issued at Washington, DC, on September 8, 2014.

Patricia A. Hoffman,

Assistant Secretary, Electricity Delivery and Energy Reliability.

[FR Doc. 2014–21838 Filed 9–11–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Sector Framework Implementation Guidance

AGENCY: Department of Energy.

ACTION: Request for Public Comment.

SUMMARY: The Department of Energy (DOE) invites public comment on DOE's draft document *Energy Sector Cybersecurity Framework Implementation Guidance* (Guidance). The document is available for a 30 day comment period at *http://energy.gov/node/942856.*

DATES: Comments must be received on or before October 14, 2014.

ADDRESSES: Comments to be submitted electronically must be submitted through the Email address *Cyber.Framework@hq.doe.gov* using the submission form at *http://energy.gov/node/942856.* Written comments may be submitted to Akhlesh Kaushiva, Program Manager, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Akhlesh Kaushiva, Program Manager, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 at *Cyber.Framework@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Since the release of the Cybersecurity Framework by the National Institute of Standards and Technology (NIST) on February 12, 2014, DOE has collaborated with private sector stakeholders through the Electricity Subsector Coordinating Council (ESCC) and the Oil & Natural Gas Subsector Coordinating Council (ONG SCC) forums for the development of the draft Guidance. The DOE, through a notice published in **Federal Register** on June 20, 2014, requested energy sector organizations to participate in the ESCC and ONG SCC forums. The DOE has also been coordinating with other Sector Specific Agency (SSA) representatives and interested government stakeholders for the development of the draft Guidance and to address cross-sector overlaps. The primary goal of the document is to help energy sector stakeholders develop or align existing cybersecurity risk management programs to meet the objectives of the Cybersecurity Framework. The document will also help energy sector organizations effectively demonstrate and communicate their cybersecurity risk management approach and use of the Framework to both internal and external stakeholders.

Authority: Section 8 (b) Executive Order 13636 ''Improving Critical Infrastructure Cybersecurity''.

Issued at Washington, DC, on September 8, 2014.

Patricia A. Hoffman,

Assistant Secretary, Electricity Delivery and Energy Reliability.

[FR Doc. 2014–21840 Filed 9–11–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting: Correction.

SUMMARY: On August 14, 2014, the Department of Energy (DOE) published a notice of open meeting announcing a meeting on September 11, 2014 of the Environmental Management Site-Specific Advisory Board, Paducah (79 FR 47632). This document makes a correction to that notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Woodard, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (270) 441–6820.

Correction

In the **Federal Register** of August 14, 2014, in FR Doc. 2014–19307, on page 47632, please make the following correction:

In that notice under **DATES**, third column, second paragraph, the meeting date has been changed. The new date is September 25, 2014 instead of September 11, 2014.

Issued at Washington, DC, on September 8, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–21841 Filed 9–11–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD14–4–000]

Proposed Agency Information Collection

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment Request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection in Docket No. RD14–4–000 to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (79 FR 36498, 6/27/2014) requesting public comments. FERC received no comments in response to that notice and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by October 14, 2014.

ADDRESSES: Comments filed with OMB, identified by the docket number, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. RD14–4–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The proposed information collection in Docket No. RD14–4–000 relates to a proposed revision to the Interchange Scheduling and Coordination (INT) group of Reliability Standards, developed by the North American Electric Reliability Corporation (NERC), and submitted to the Commission for

approval. The proposed revision modifies the Interchange Scheduling and Coordination Reliability Standards in response to Commission directives in Order No. 693,[1] as well as some other clarifying revisions relating to the ten revised definitions and four new definitions to be added to the NERC Glossary of Terms Used in NERC Reliability Standards (NERC Glossary). One of the revised definitions leads some entities under Reliability Standard IRO–008–1 to perform additional paperwork tasks. The existing information collection requirements contained in the Interchange Scheduling and Coordination, and Interconnection Reliability Operations and Coordination groups of Reliability Standards are contained in FERC–725A (OMB Control Number 1902–0244). The Commission is submitting the new information collection requirements to OMB under new collections FERC–725W (for the new burden under INT–011–1) and FERC–725Z (for the new burden under IRO–008–1).[2]

On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 Reliability Standards and associated definitions filed by NERC, including the Interchange Scheduling and Coordination group of Reliability Standards INT–001, INT–003, INT–004, INT–005, INT–006, INT–007, INT–008, INT–009, and INT–010.[3] In Order No. 693, the Commission directed NERC to make changes through the Reliability Standards development process to address certain directives. Specifically, the Commission directed NERC to: (1) Develop a modification to INT–001–2 that includes a requirement that interchange information must be submitted for all point-to-point transfers entirely within a balancing authority area, including all grandfathered and ''non-Order No. 888'' transfers; and (2) to develop a modification to INT–006–1 through the Reliability Standards development process to make the standard applicable to reliability coordinators and transmission operators, and require reliability coordinators and transmission operators to review energy interchange transactions from the wide-area and local area reliability viewpoints respectively and, where their review indicates a potential detrimental reliability impact, communicate to the sink balancing authorities necessary transaction modifications.

In its February 27, 2014 petition, NERC seeks Commission approval of proposed revisions to the currently effective Reliability Standards, as well as one new Reliability Standard to address the Commission's directives. NERC asserts that, collectively, the five proposed Reliability Standards, consisting of fourteen requirements, consolidate the body of Interchange Scheduling and Coordination Reliability Standards. In its petition, NERC also seeks approval for the retirement of the currently effective Reliability Standards.[4] NERC also seeks approval of ten revised definitions and four new definitions to be added to the NERC Glossary. NERC proposes to add the term ''Interchange'' to the existing definition for ''Operational Planning Analysis.''[5] NERC States that ''by explicitly including 'Interchange' in the definition of 'Operational Planning Analysis,' the Reliability Coordinator must consider Interchange when performing the analysis required in Reliability Standard IRO–008–1.''[6] Therefore, the estimates for this information collection are based on the proposed modifications.

The Commission estimates a modest increase in information collection and reporting that would result from implementing NERC's proposed revision to the NERC Glossary definition of ''Operational Planning Analysis'' and new proposed Reliability Standard INT–011–1. The estimate reflects NERC's proposal to include a requirement that interchange information must be submitted for all point-to-point transfers entirely within a balancing authority area, including all grandfathered and ''non-Order No. 888'' transfers; and NERC's alternative proposal to address the Commission's concern regarding INT–006–1, as described above.

NERC explains that ''by explicitly including 'Interchange' in the definition of 'Operational Planning Analysis,' the Reliability Coordinator must consider Interchange when performing the analysis required in Reliability Standard IRO–008–1.''[7] These administrative burdens fall into three categories of ''Submit Interchange Information,'' ''Communicate Transaction Modification'' and ''Submit a Request for Interchange'' as described in NERC's petition.[8] NERC's technical justification has shown that when the results of reliability coordinator studies indicate the need for action, the reliability coordinator is required to share the results per Requirement R3 of Reliability Standard IRO–008–1. NERC explains that because energy transfers within a balancing authority area that use point-to-point transmission service can impact transmission congestion, proposed Reliability Standard INT–011–1 ensures that these transfers are communicated and accounted for in congestion management procedures. If a transfer within a balancing authority area is submitted as a request for interchange or otherwise accounted for in congestion management procedures, it can be evaluated and processed comparable to a request for interchange that crosses balancing authority areas.[9]

Accordingly, we estimate an increase of one hour needed for ''Submit Interchange Information'' for balancing authorities, ''Communicate Transaction Modification'' for the reliability coordinators, and ''Submit a Request for Interchange'' for the load-serving entities, respectively. With respect to the proposed revisions and retirement of the currently-effective Reliability Standards, the Commission estimates no material change in information collection because the consolidation of the standards does not impact the paperwork burden.

Burden Statement: Public reporting burden for this proposed collection is estimated as:

[1] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, at PP 819, 821, 843, 848, 872, 875 & 887, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[2] In the initial notice the Commission stated that the new information collection would be under FERC–725A. However, to increase administrative efficiency, the Commission will submit the new requirements to OMB under FERC–725W and FERC–725Z.

[3] Order No. 693, FERC Stats. & Regs. ¶31,242 at PP 814–887.

[4] NERC Petition at 4.

[5] ''Interchange'' is defined in the NERC Glossary as ''Energy transfers that cross Balancing Authority Boundaries.

[6] NERC Petition at 32.

[7] NERC Petition at 32.

[8] NERC Petition, Exhibit E at 1–2.

[9] NERC Petition at 22.

[10] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * XX per Hour = Average Cost per Response. The estimates for cost per hour (rounded to the nearest dollar) are derived as follows:

- $60/hour, the average salary plus benefits per engineer (from Bureau of Labor Statistics at *http://bls.gov/oes/current/naics3_221000.htm*)
- $82/hour, the salary plus benefits per manager (from Bureau of Labor Statistics at *http://bls.gov/oes/current/naics3_221000.htm*)
- $32/hour, the salary plus benefits per information and record clerks (from Bureau of Labor Statistics at *http://bls.gov/oes/current/naics3_221000.htm*).

FERC–725A						
	Number and type of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1)*(2)=(3)	Average burden & cost per response [10] (4)	Total annual burden hours & total annual cost (3)*(4)=(5)	Cost per respondent ($) (5)÷(1)
Submit Interchange Information.	114, Balancing authority (BA).	52	5,928	1, $60	5,928, $355,680	$3,120
Communicate Transaction Modification.	21, Reliability coordinator (RC).	12	252	1, $60	252, $15,120	720
Submit Request for Interchange, (INT–011–1).	502, Load-serving entity (LSE).	12	6,024	1, $60	6,024, $361,440	720
Evidence Retention	637, BA/RC/LSE	1	637	1, $32	637, $20,384	32
Total			12,841		12,841, $752,624	

Dated: September 5, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21742 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13135–004]

City of Watervliet; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* License for Major Project-Existing Dam.

b. *Project No.:* P–13135–004.

c. *Date filed:* August 26, 2014.

d. *Applicant:* City of Watervliet, New York.

e. *Name of Project:* Delta Hydroelectric Project.

f. *Location:* On the East Branch of the Mohawk River, in the Town of Rome, Oneida County, NY. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Michael P. Manning, Mayor, City of Watervliet, City Hall, Watervliet, NY 12189, Phone: 518–270–3815, Email: *mikemanning@watervliet.com;* or Mark Gleason, General Manager, City of Watervliet, City Hall, Watervliet, NY 12189, Phone: 518–270–3800x122, Email: *mgleason@watervliet.com;* or Wendy Jo Carey, P.E., Albany Engineering Corporation, 5 Washington Square, Albany, NY 12205, Phone: 518–456–7712x401 Email: *wendy@albanyengineering.com.*

i. *FERC Contact:* Brandi Sangunett, Phone: (202) 502–8393, Email: *brandi.sangunett@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* October 25, 2014.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13135–004.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would consist of: (1) The existing 1,016-foot-long, 76-foot-high Delta dam, owned by the New York State Canal Corporation; (2) an existing impoundment having a surface area of 2,700 acres and a storage capacity of 63,200 acre-feet at the spillway crest elevation of 551.37 feet North American Vertical Datum of 1988; (3) a new 40-foot-diameter cylindrical powerhouse containing one turbine-generator unit with a total installed capacity of 7.4 megawatts; (4) a new 17,000-foot-long, 13.2-kilovolt underground generator lead; and (5) appurtenant facilities. The project would generate about 14,100 megawatt-hours of electricity annually.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter	October 2014
Request Additional Information	October 2014
Issue Notice of Acceptance	January 2015
Issue Scoping Document 1 for comments	February 2015
Comments on Scoping Document 1	April 2015
Issue Scoping Document 2	May 2015
Issue Notice of Ready for Environmental Analysis	May 2015
Commission issues EA	November 2015
Comments on EA	December 2015

Dated: September 5, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21745 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2485–065]

FirstLight Hydro Generating Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application for Temporary Amendment of Minimum and Maximum Reservoir Elevation Requirement.

b. *Project No.:* 2485–065.

c. *Date Filed:* August 8, 2014.

d. *Applicant:* FirstLight Hydro Generating Company (Firstlight).

e. *Name of Project:* Northfield Mountain Pumped Storage Project.

f. *Location:* The project is located on the east side of the Connecticut River, in the towns of Northfield and Erving, in Franklin County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John Howard, Director of FERC Compliance, FirstLight Hydro Generating Company, 99 Millers Falls Road, Northfield, MA 01360. Phone (413) 659–4489.

i. *FERC Contact:* Mr. Christopher Chaney, (202) 502–6778, or *christopher.chaney@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2485–065) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* FirstLight is seeking temporary authorization to modify the upper reservoir's upper and lower water surface elevation limits from 1000.5 and 938 feet, to 1004.5 and 920 feet, respectively. FirstLight proposes to use the additional storage capacity between December 1, 2014, and March 31, 2014. According to FirstLight approval of changes in the water surface elevations would result in an increase in the maximum daily generation from 8,475 megawatt-hours (MWh) to 10,645 MWh.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document (i.e. P–2485). You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21739 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–543–000]

Puget Sound Energy, Inc.; Notice of Application

Take notice that on August 25, 2014, Puget Sound Energy, Inc. (Puget), P.O. Box 94034, Bellevue, WA 98004, filed an application in the above referenced docket pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) requesting authorization to make modifications to the Jackson Prairie Storage facility (Jackson Prairie) in Lewis County, Washington. Puget proposes to: (i) Permanently plug and abandon four gas wells; (ii) convert an observation well to a gas recycle well and build approximately 500 feet of pipeline to tie it into a gathering line; and (iii) construct and operate a new water withdrawal well and related facilities. Puget estimates the total cost of the proposed project to be $3.3 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Andrea Chambers, Ballard Spahr LLP, 1909 K Street NW., 12th Floor, Washington, DC 20006, by telephone at (202) 661–7607, or by email at *chambersa@ballardspahr.com* or William F. Donahue, Manager, Natural Gas Resources, Puget Sound Energy, Inc., P.O. Box 94034, Bellevue, WA 98004, by telephone at (425) 456–2356 or by email at *bill.donahue@pse.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: September 26, 2014.

Dated: September 5, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21737 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–132–000.

Applicants: Elkhorn Ridge Wind, LLC, Forward Windpower, LLC, Jeffers Wind 20, LLC, Lookout Windpower, LLC, San Juan Mesa Wind Project, LLC, Sleeping Bear, LLC, Wildorado Wind, LLC.

Description: Application for Authorization Under Section 203 of the FPA and Request for Expedited Action of Elkhorn Ridge Wind, LLC, et. al.

Filed Date: 9/4/14.

Accession Number: 20140904–5083.

Comments Due: 5 p.m. ET 9/25/14.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG14–92–000.

Applicants: Origin Wind Energy, LLC.

Description: Self-Certification of EG or FC of Origin Wind Energy, LLC.

Filed Date: 9/4/14.

Accession Number: 20140904–5183.

Comments Due: 5 p.m. ET 9/25/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2870–004; ER10–2868–003; ER10–2853–003; ER10–2856–003; ER10–2872–003; ER10–2860–004; ER10–2865–004.
Applicants: TransCanada Power Marketing Ltd, TransCanada Hydro Northeast Inc., TransCanada Maine Wind Development Inc., Ocean State Power, Ocean State Power II,TC Ravenswood, LLC.
Description: Amendment to July 27, 2014 Updated Market Power Analysis for the Northeast Region of TransCanada Entities.
Filed Date: 9/4/14.
Accession Number: 20140904–5093.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2443–002.
Applicants: Carr Street Generating Station, L.P.
Description: Tariff Amendment per 35.17(b): Carr Street MBR Tariff to be effective 9/4/2014.
Filed Date: 9/3/14.
Accession Number: 20140903–5142.
Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER14–2472–001.
Applicants: Agera Energy LLC.
Description: Tariff Amendment per 35.17(b): Amendment to 1 to be effective 7/23/2014.
Filed Date: 9/3/14.
Accession Number: 20140903–5155.
Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER14–2520–001.
Applicants: NorthWestern Corporation.
Description: Tariff Amendment per 35.17(b): Amendment of Pending Tariff Filing—LGIP Appendices 1 and 2 to be effective 9/27/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5003.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2672–001.
Applicants: EDF Energy Services, LLC.
Description: Tariff Amendment per 35.17(b): MBR Revised Tariff to be effective 9/4/2014.
Filed Date: 9/3/14.
Accession Number: 20140903–5158.
Comments Due: 5 p.m. ET 9/17/14.

Docket Numbers: ER14–2764–000.
Applicants: Otter Tail Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Filing of Certificate of Concurrence—TCEA to be effective 8/1/2014.
Filed Date: 9/3/14.
Accession Number: 20140903–5157.
Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER14–2765–000.
Applicants: Otter Tail Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Filing of Certificate of Concurrence—OMA to be effective 8/1/2014.
Filed Date: 9/3/14.
Accession Number: 20140903–5159.
Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER14–2766–000.
Applicants: Otter Tail Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Filing of Certificate of Concurrence—CMA to be effective 8/1/2014.
Filed Date: 9/3/14.
Accession Number: 20140903–5160.
Comments Due: 5 p.m. ET 9/24/14.

Docket Numbers: ER14–2767–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): GIA & Distribution Service Agreement for Windstream 6040 Project to be effective 8/31/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5001.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2768–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): GIA and Distribution Service Agreement with United States Air Force to be effective 9/5/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5002.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2769–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Distribution Service Agreement with Windhub Solar, LLC. to be effective 11/4/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5007.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2770–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Substitute Original 2893 Steele Flats Wind Project, LLC GIA to be effective 5/23/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5077.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2771–000.
Applicants: Massachusetts Municipal Wholesale Electric Company.
Description: Request for Issuance of Expedited Waiver of New Capacity Qualification ''Package'' Deadline for the Ninth Forward Capacity Auction of Massachusetts Municipal Wholesale Electric Company.
Filed Date: 9/4/14.
Accession Number: 20140904–5085.
Comments Due: 5 p.m. ET 9/15/14.

Docket Numbers: ER14–2772–000.
Applicants: PPL EnergyPlus, LLC.
Description: Tariff Withdrawal per 35.15: Notice of Cancellation of Addendum to Hourly Coordination Agreement to be effective 9/5/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5105.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2773–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Two Small Generator Interconnection Agreements for Lincoln Solar Millennium Fund, LLC, Service Agreement Nos. 248 and 259 of Pacific Gas and Electric Company.
Filed Date: 9/4/14.
Accession Number: 20140904–5118.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2774–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Small Generator Interconnection Agreement for NNN Land and Energy, LLC, Service Agreement No. 261 of Pacific Gas and Electric Company.
Filed Date: 9/4/14.
Accession Number: 20140904–5122.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2775–000.
Applicants: The Dayton Power and Light Company.
Description: Tariff Withdrawal per 35.15: FERC Rate Schedule No. 42, Village of Arcanum to be effective 12/31/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5175.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2776–000.
Applicants: The Dayton Power and Light Company.
Description: Tariff Withdrawal per 35.15: FERC Rate Schedule No. 49, Village of Eldorado to be effective 12/31/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5184.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2777–000.
Applicants: The Dayton Power and Light Company.
Description: Tariff Withdrawal per 35.15: FERC Rate Schedule No. 43, Village of Jackson Center to be effective 12/31/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5185.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2778–000.
Applicants: The Dayton Power and Light Company.
Description: Tariff Withdrawal per 35.15: FERC Rate Schedule No. 44,

Village of Lakeview to be effective 12/31/2014.

Filed Date: 9/4/14.

Accession Number: 20140904–5186.

Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2779–000.

Applicants: The Dayton Power and Light Company.

Description: Tariff Withdrawal per 35.15: FERC Rate Schedule No. 45, Village of Mendon to be effective 12/31/2014.

Filed Date: 9/4/14.

Accession Number: 20140904–5187.

Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2780–000.

Applicants: The Dayton Power and Light Company.

Description: Tariff Withdrawal per 35.15: FERC Rate Schedule No. 50, Village of Minster to be effective 12/31/2014.

Filed Date: 9/4/14.

Accession Number: 20140904–5188.

Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2781–000.

Applicants: The Dayton Power and Light Company.

Description: Tariff Withdrawal per 35.15: FERC Rate Schedule No. 46, Village of New Bremen to be effective 12/31/2014.

Filed Date: 9/4/14.

Accession Number: 20140904–5191.

Comments Due: 5 p.m. ET 9/25/14.

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: September 4, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–21803 Filed 9–11–14; 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: PR14–51–000.

Applicants: Enbridge Pipelines (North Texas) L.P.

Description: Tariff filing per 284.123(b)(2)/.: Request for New Rates to be effective 9/1/2014; TOFC: 760.

Filed Date: 8/27/14.

Accession Number: 20140827–5079.

Comments Due: 5 p.m. ET 9/17/14.

284.123(g) Protests Due

Docket Numbers: RP14–1237–000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) rate filing per 154.204: Permanent Capacity Release of Neg Rate Agmt (Constellation 38273 to Exelon 34142) to be effective 9/1/2014.

Filed Date: 9/2/14.

Accession Number: 20140902–5057.

Comments Due: 5 p.m. ET 9/15/14.

Docket Numbers: RP14–1238–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) rate filing per 154.204: Cap Rel Neg Rate Agmt (QEP 37657 to Trans LA 43005) to be effective 9/1/2014.

Filed Date: 9/2/14.

Accession Number: 20140902–5068.

Comments Due: 5 p.m. ET 9/15/14.

Docket Numbers: RP14–1239–000.

Applicants: ANR Storage Company.

Description: § 4(d) rate filing per 154.601: United Energy_Twin Eagle to be effective 9/1/2014.

Filed Date: 9/2/14.

Accession Number: 20140902–5080.

Comments Due: 5 p.m. ET 9/15/14.

Docket Numbers: RP14–1240–000.

Applicants: Columbia Gulf Transmission, LLC.

Description: FTS–2 Out of Path Refund Report of Columbia Gulf Transmission, LLC.

Filed Date: 9/2/14.

Accession Number: 20140902–5083.

Comments Due: 5 p.m. ET 9/15/14.

Docket Numbers: RP14–1241–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Compliance filing per 154.203: Giles County Implementation, CP13–125 to be effective 10/1/2014.

Filed Date: 9/2/14.

Accession Number: 20140902–5211.

Comments Due: 5 p.m. ET 9/15/14.

Docket Numbers: RP14–1242–000.

Applicants: Tennessee Gas Pipeline Company, LLC.

Description: § 4(d) rate filing per 154.204: Clean Up—Negotiated Rate and Non-Conforming Agreements to be effective 10/1/2014.

Filed Date: 9/2/14.

Accession Number: 20140902–5213.

Comments Due: 5 p.m. ET 9/15/14.

Docket Numbers: RP14–1243–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) rate filing per 154.601: Negotiated & Non-Conforming Service Agmts—Giles Co, Celanese to be effective 10/1/2014.

Filed Date: 9/2/14.

Accession Number: 20140902–5222.

Comments Due: 5 p.m. ET 9/15/14.

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: September 3, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–21805 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–134–000.

Applicants: American Transmission Company LLC (ATC).

Description: Application for Authority to Acquire Transmission Facilities Under Section 203 of the FPA of American Transmission Company LLC.

Filed Date: 9/5/14.

Accession Number: 20140905–5117.

Comments Due: 5 p.m. ET 9/26/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–2596–001.
Applicants: NSTAR Electric Company, ISO New England Inc.
Description: Tariff Amendment per 35.17(b): Amendment to ISO–NE, MTBA and NSTAR Local Service Agreement TSA–NSTAR–001 to be effective 5/1/2014.
Filed Date: 9/5/14.
Accession Number: 20140905–5033.
Comments Due: 5 p.m. ET 9/26/14.

Docket Numbers: ER14–2782–000.
Applicants: The Dayton Power and Light Company.
Description: Tariff Withdrawal per 35.15: FERC Rate Schedule No. 51, City of Tipp City to be effective 12/31/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5193.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2783–000.
Applicants: The Dayton Power and Light Company.
Description: Tariff Withdrawal per 35.15: FERC Rate Schedule No. 52, Village of Versailles to be effective 12/31/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5197.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2784–000.
Applicants: The Dayton Power and Light Company.
Description: Tariff Withdrawal per 35.15: FERC Rate Schedule No. 47, Village of Waynesfield to be effective 12/31/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5200.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2785–000.
Applicants: The Dayton Power and Light Company.
Description: Tariff Withdrawal per 35.15: FERC Rate Schedule No. 53, Village of Yellow Springs to be effective 12/31/2014.
Filed Date: 9/4/14.
Accession Number: 20140904–5203.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: ER14–2786–000.
Applicants: Portland General Electric Company.
Description: Compliance filing per 35: Sched 5–6 Att N Sec 3—Order 789 to be effective 10/1/2014.
Filed Date: 9/5/14.
Accession Number: 20140905–5001.
Comments Due: 5 p.m. ET 9/26/14.

Docket Numbers: ER14–2787–000.
Applicants: Florida Power & Light Company.
Description: Tariff Withdrawal per 35.15: FPL's Notice of Cancellation of Charlotte Interconnection Agreement to be effective 5/31/2014.
Filed Date: 9/5/14.
Accession Number: 20140905–5072.
Comments Due: 5 p.m. ET 9/26/14.

Docket Numbers: ER14–2788–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(1): Revised Formula Rate PBOPs Amount and Mechanism to be effective 1/1/2014.
Filed Date: 9/5/14.
Accession Number: 20140905–5075.
Comments Due: 5 p.m. ET 9/26/14.

Docket Numbers: ER14–2789–000.
Applicants: Florida Power & Light Company.
Description: Notice of Cancellation of Seminole Plant Interconnection Agreement Rate Schedule No. 42 of Florida Power & Light Company.
Filed Date: 9/5/14.
Accession Number: 20140905–5078.
Comments Due: 5 p.m. ET 9/26/14.

Docket Numbers: ER14–2790–000.
Applicants: Arlington Valley, LLC.
Description: Compliance filing per 35: Tariff Revisions for Sales of Ancillary Services to be effective 9/8/2014.
Filed Date: 9/5/14.
Accession Number: 20140905–5098.
Comments Due: 5 p.m. ET 9/26/14.

Docket Numbers: ER14–2791–000.
Applicants: Griffith Energy LLC.
Description: Compliance filing per 35: Tariff Revisions for Sales of Ancillary Services, to be effective 9/8/2014.
Filed Date: 9/5/14.
Accession Number: 20140905–5105.
Comments Due: 5 p.m. ET 9/26/14.

Docket Numbers: ER14–2792–000.
Applicants: GWF Energy LLC.
Description: Compliance filing per 35: Tariff Revisions for Sales of Ancillary Services to be effective 9/8/2014.
Filed Date: 9/5/14.
Accession Number: 20140905–5106.
Comments Due: 5 p.m. ET 9/26/14.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC14–16–000.
Applicants: Bornish Wind, LP.
Description: Notification of Self-Certification of Foreign Utility Company Status of Bornish Wind, LP.
Filed Date: 9/4/14.
Accession Number: 20140904–5219.
Comments Due: 5 p.m. ET 9/25/14.

Docket Numbers: FC14–17–000.
Applicants: Kerwood Wind, LP.
Description: Notification of Self-Certification of Foreign Utility Company Status of Kerwood Wind, LP.
Filed Date: 9/4/14.
Accession Number: 20140904–5220.
Comments Due: 5 p.m. ET 9/25/14.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF14–700–000.
Applicants: CFSG–UCH Energy LLC.
Description: Form 556 of CFSG–UCH Energy LLC.
Filed Date: 8/6/14.
Accession Number: 20140806–5030.
Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 5, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–21804 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at South Carolina Regional Transmission Planning Meeting

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the meeting of the South Carolina Regional Planning (SCRTP) Stakeholder Group, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

SCRTP September 12, 2014 (10:00 a.m.—3:00 p.m.) Hilton Garden Inn—Charleston Airport, Palmetto Room, 5265 International Blvd., North Charleston, SC 29418. The hotel's phone number is (843) 308–9330.

The discussions may address matters at issue in the following proceedings:

Docket No. ER13–107, *South Carolina Electric & Gas Company*
Docket No. ER13–1935, *South Carolina Electric & Gas Company*

Docket No. ER13–1928, *Duke Energy Carolinas/Carolina Power & Light*
Docket No. ER13–1930, *Louisville Gas & Electric Company/Kentucky Utilities*
Docket No. ER13–1940, *Ohio Valley Electric Corporation*
Docket No. ER13–1941, *Southern Companies*

These meetings are open to the public.

For more information, contact Mike Lee, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8658 or *Michael.Lee@ferc.gov.*

Dated: September 5, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21744 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD14–14–000]

Price Formation in Energy and Ancillary Services Markets Operated by Regional Transmission Organizations and Independent System Operators; Notice of Workshop

As announced in the Notice issued on June 19, 2014, the Federal Energy Regulatory Commission (Commission) directed its staff to convene workshops as necessary to commence a discussion with industry on existing market rules and operational practices affecting price formation issues in energy and ancillary services markets operated by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). The June 19 Notice listed four areas of interest: uplift payments, offer price mitigation and offer price caps, scarcity and shortage pricing, and operator actions that affect prices. The second workshop will address technical, operational, and market issues related to offer price mitigation and offer price caps, and scarcity and shortage pricing in energy and ancillary services markets operated by RTOs and ISOs, and will be held on Tuesday, October 28, 2014 from 8:45 a.m. to 5:00 p.m. in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC, 20426. Commission members may participate in the workshop.

The workshop will be open for the public to attend. Advance registration is not required, but is encouraged. Attendees may register at the following Web page: *https://www.ferc.gov/whats-new/registration/10-28-14-form.asp.*

Those wishing to participate in the program for this event should nominate themselves through the on-line registration form no later than September 23, 2014 at the following Web page: *https://www.ferc.gov/whats-new/registration/10-28-14-speaker-form.asp.* At this Web page, please provide an abstract (1,500 character limit) of the issue(s) you propose to address. Due to time constraints, we may not be able to accommodate all those interested in speaking.

Further details and a formal agenda will be issued prior to the workshop.

Information on this event will be posted on the Calendar of Events on the Commission's Web site, *www.ferc.gov,* prior to the event. The workshop will also be Webcast and transcribed. Anyone with Internet access who desires to listen to this event can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for Webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.

Commission workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For further information on this workshop, please contact:

Logistical Information

Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE. Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Scarcity/shortage pricing

Bob Hellrich-Dawson, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 , (202) 502–6360, *bob.hellrich-dawson@ferc.gov.*

Offer Price Mitigation and Offer Price Caps

Emma Nicholson, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8846, *emma.nicholson@ferc.gov.*

Dated: September 5, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–21802 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff will attend the following meeting related to the Midcontinent Independent System Operator, Inc. (MISO)—PJM Interconnection, L.L.C. (PJM) Joint and Common Market Initiative (Docket No. AD14–3–000): MISO/PJM Joint Stakeholder Meeting—September 10, 2014

The above-referenced meeting will be held at: PJM Training Center, 2750 Monroe Boulevard, Audubon, PA 19403.

The above-referenced meeting is open to the public.

Further information may be found at *www.pjm.com.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. EL13–47, FirstEnergy Solutions Corp. and Allegheny Energy Supply Company, LLC v. *PJM Interconnection, L.L.C.*
Docket No. EL13–75, Indicated Load Serving Entities v. *Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C.*
Docket No. ER14–503, PJM Interconnection, L.L.C.
Docket No. EL13–88, Northern Indiana Public Service Company v. *Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C.*
Docket No. ER13–2233, Midcontinent Independent System Operator, Inc.
Docket No. EL11–34, Midcontinent Independent System Operator, Inc.
Docket No. EL14–21, Southwest Power Pool, Inc. v. *Midcontinent Independent System Operator, Inc.*
Docket No. EL14–30, Midcontinent Independent System Operator, Inc. v. *Southwest Power Pool, Inc.*
Docket No. ER11–1844, Midwest Independent Transmission System Operator, Inc.
Docket No. ER13–1864, Southwest Power Pool, Inc.

Docket Nos. ER13–1923, ER13–1938, ER13–1943, ER13–1945, Midcontinent Independent System Operator, Inc.
Docket Nos. ER13–1924, ER13–1926, ER13–1927, ER13–1936, ER13–1944, ER13–1947, PJM Interconnection, L.L.C.
Docket Nos. ER13–1937, ER13–1939, Southwest Power Pool, Inc.
Docket No. ER14–1174, Southwest Power Pool, Inc.
Docket No. ER14–1713, Midcontinent Independent System Operator, Inc.
Docket No. ER14–1736, Midcontinent Independent System Operator, Inc.
Docket No. ER14–2367, PJM Interconnection, L.L.C.
Docket No. ER14–2368, Midcontinent Independent System Operator, Inc.

For more information, contact Mary Cain, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission at (202) 502–6337 or *mary.cain@ferc.gov.*

Dated: September 5, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21738 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–547–000]

Devon Gas Services, L.P.; Notice of Petition for Declaratory Order

Take notice that on September 2, 2014, Devon Gas Services, L.P.(DGS), pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2014), filed a petition for declaratory order seeking a Commission order declaring that certain natural gas pipeline and appurtenant facilities to be acquired by DGS from Natural Gas Pipeline Company of America, LLC, will perform a gathering function upon their abandonment, transfer, and sale, and therefore, will be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 2, 2014.

Dated: September 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21743 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14626–000]

GreenVolt Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 20, 2014, GreenVolt Hydro, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Two Girls Creek Hydroelectric Project (project) to be located on Two Girls Creek near Sweet Home in Linn County, Oregon. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following new facilities: (1) A weir with screened intake; (2) a 19,365-foot-long, 30 to 36-inch-diameter high density polyethylene (HDPE) penstock; (3) a 50 feet by 40 feet concrete block powerhouse with a single Pelton turbine/generator unit rated for 5 megawatt at 1,606 feet of net head; (4) a 1,000-foot-long, 60-inch-diameter HDPE tailrace conduit; (5) an underground 7.2-mile-long, 12-kilovolt (kV) transmission line connection to an existing transmission line (the point of interconnection); (6) a 40-feet-wide right of way access road; and (7) appurtenant facilities. The estimated annual generation of the project would be 36.87 gigawatt-hours.

Applicant Contact: Mr. Scott Shankland, Manager, GreenVolt Hydro, LLC, 52 Galen Street, Lake Oswego, Oregon 97035; phone: (503) 504–2660.

FERC Contact: Kim Nguyen; email: *kim.nguyen@ferc.gov;* phone: (202) 502–6105.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14626–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14626) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 4, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21741 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13734–002]

Lock + Hydro Friends Fund XLVI; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 1, 2014, Lock + Hydro Friends Fund XLVI filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Hildebrand Lock & Dam Project (Hildebrand Project or project) to be located at the U.S. Army Corps of Engineers' (Corps) Hildebrand Lock and Dam on the Monongahela River in Monongahela County, West Virginia. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 55-foot-long by 40-foot-high Large Frame Module (LFM); (2) two pre-fabricated concrete walls if needed; (3) a new 50-foot-wide by 100-foot-long tailrace; (4) five low-head modular bulb hydroelectric turbine-generators each rated at 1.5 megawatts; (5) a low-voltage, 36.7-kilovolt (kV) distribution line from the generator to the new switchyard; (6) a new 25-foot-wide by 50-foot-long switchyard; and (7) a new 69-kV transmission line approximately 1,000 feet long from the new switchyard to an existing substation. The estimated annual generation of the Hildebrand Project would be 66,974 megawatt-hours.

Applicant Contact: Mr. Wayne Krouse, Lock + Hydro Friends Fund XLVI, 4900 Woodway Drive, Suite 745, Houston, TX 77056; phone: (877) 556–6566.

FERC Contact: Woohee Choi; phone: (202) 502–6336.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13734–002.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13734) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 5, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–21740 Filed 9–11–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9916–65–Region 6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the EXPLO Systems, Inc., Superfund Site, Camp Minden, Webster Parrish, Louisiana.

The settlement requires the two (2) settling parties to pay a total of $111,800 as payment of past response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before October 14, 2014.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Cynthia Brown at 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–7480. Comments should reference the EXPLO Systems, Inc., Superfund Site, Camp Minden, Webster Parrish, Louisiana, and EPA Docket Number 06–06–14, and should be addressed to Cynthia Brown at the address listed above.

FOR FURTHER INFORMATION CONTACT: George Malone, Assistant Regional Counsel, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–8030.

Dated: August 29, 2014.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2014–21812 Filed 9–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9916–52–OECA]

National Environmental Justice Advisory Council; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Charter Renewal.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2,

the National Environmental Justice Advisory Council (NEJAC) is a necessary committee which is in the public interest. Accordingly, NEJAC will be renewed for an additional two-year period. The purpose of the NEJAC is to provide advice and recommendations to the Administrator about issues associated with integrating environmental justice concerns into EPA's outreach activities, public policies, science, regulatory, enforcement, and compliance decisions.

Inquiries may be directed to Sherri White, NEJAC Designated Federal Officer, U.S. EPA, 1200 Pennsylvania Avenue NW., (Mail Code 2201A), Washington, DC 20460.

Dated: July 29, 2014.

Cynthia Giles,

EPA Office of Enforcement and Compliance Assurance.

[FR Doc. 2014–21810 Filed 9–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL_9916–54–OEI]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of the State of North Dakota's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective September 12, 2014.

FOR FURTHER INFORMATION CONTACT: Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements. Once an authorized program has EPA's approval to accept electronic documents under certain programs, CROMERR § 3.1000(a)(4) requires that the program keep EPA apprised of any changes to laws, policies, or the electronic document receiving systems that have the potential to affect the program's compliance with CROMERR § 3.2000.

On January 31, 2013, the North Dakota Department of Health (ND DOH) submitted an amended application titled ''Electronic Reporting Information System'' for revisions/modifications of its EPA-approved electronic reporting program under its EPA-authorized programs under title 40 CFR to allow new electronic reporting. EPA reviewed ND DOH's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve North Dakota's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR Parts 51, 60–63, 70, 122, 146, 262, 264–266, 268, 270, 280, and 403, is being published in the **Federal Register:**

Part 52—Approval and Promulgation of Implementation Plans;

Part 62—Approval and Promulgation of State Plans for Designated Facilities and Pollutants;

Part 70—State Operating Permit Programs;

Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System;

Part 147—State Underground Injection Control Programs;

Part 272—Approved State Hazardous Waste Management Programs; and

Part 281—Approval of State Underground Storage Tank Programs;

Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution.

ND DOH was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Dated: August 27, 2014.

Matthew Leopard,

Acting Director, Office of Information Collection.

[FR Doc. 2014–21821 Filed 9–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9016–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/01/2014 through 09/05/2014

Pursuant to 40 CFR 1506.9

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20140255, Second Draft Supplement, USFS, UT, Ogden Ranger District Travel Plan Revision, Comment Period Ends: 10/27/2014, Contact: Rick Vallejos 801–625–5112.

EIS No. 20140256, Final EIS, USFS, AZ, New Special-Use Permits for Recreation Residences on the Safford Ranger District, Review Period Ends: 10/29/2014, Contact: Rachael Hohl 520–388–8352.

EIS No. 20140257, Draft EIS, USA, VA, Fort Belvoir Short-Term Projects and Real Property Master Plan Update, Comment Period Ends: 11/11/2014, Contact: Marc Russell 703–806–0022.

EIS No. 20140258, Final EIS, NPS, IN, Indiana Dunes National Lakeshore Shoreline Restoration and Management Plan, Review Period Ends: 10/14/2014, Contact: Paul Labovitz 219–395–1699.

EIS No. 20140259, Final EIS, NRC, PA, GENERIC—License Renewal of

Nuclear Plants Regarding Limerick Generating Station, Units 1 and 2, Review Period Ends: 10/14/2014, Contact: Leslie Perkins 301–415–2375.

EIS No. 20140260, Draft EIS, BR, CA, Upper San Joaquin River Basin Storage Investigation, Comment Period Ends: 10/27/2014, Contact: Melissa Harris 916–978–5075.

EIS No. 20140261, Final EIS, NMFS, 00, Columbia River Basin Hatchery Operations and the Funding of Mitchell Act Hatchery Programs, Review Period Ends: 11/12/2014, Contact: James Dixon 360–534–9329.

EIS No. 20140262, Draft EIS, USFS, AK, Saddle Lakes Timber Sale, Comment Period Ends: 10/27/2014, Contact: Daryl Bingham 907–228–4114.

EIS No. 20140263, Draft EIS, USFS, SC, Chester County Stream and Riparian Restoration/Enhancement Project, Comment Period Ends: 10/27/2014, Contact: Jim Knibbs 803–561–4078.

Amended Notices

EIS No. 20140153, Draft EIS, NPS, NC, Cape Lookout National Seashore Off-Road Vehicle Management Plan, Comment Period Ends: 09/19/2014, Contact: Michael B. Edwards 303–969–2694. Revision to FR Notice Published on 07/25/2014; Extending Comment Period from 09/04/2014 to 09/19/2014.

EIS No. 20140243, Draft EIS, USFS, NV, CA, Heavenly Mountain Resort Epic Discovery Project, Comment Period Ends: 10/27/2014, Contact: Matt Dickinson 530–543–2769. Revision to FR Notice Published 09/03/2014; Extending the Comment Period from 10/21/2014 to 10/27/2014 and Correction to project location should be CA and NV.

Dated: September 9, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–21808 Filed 9–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9916–51–OECA]

National Environmental Justice Advisory Council; Notification of Public Meeting and Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. All meetings are open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the NEJAC. For additional information about registering for public comment, please see **SUPPLEMENTARY INFORMATION**. Due to limited space, seating at the NEJAC meeting will be on a first-come, first-served basis.

DATES: The NEJAC meeting will convene Wednesday, October 1, 2014, from 9:00 a.m. until 3:45 p.m.; and will reconvene on Thursday, October 2, 2014, from 9:00 a.m. to 5:00 p.m. All noted times are Eastern Standard Time.

One public comment period relevant to the specific issues being considered by the NEJAC (see **SUPPLEMENTARY INFORMATION**) is scheduled for Wednesday, October 1, 2014, starting at 4:00 p.m. Eastern Standard Time. Members of the public who wish to participate during the public comment period are highly encouraged to pre-register by Noon, Eastern Standard Time, on Monday September 22, 2014.

ADDRESSES: The NEJAC meeting will be held at the EPA Potomac Yard offices located at 2777 S. Crystal Drive, Arlington, VA 16202.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the meeting should be directed to Jasmin Muriel, U.S. Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW. (MC1601A), Washington, DC 20460; by telephone at 202–564–4287; via email at *Muriel.Jasmin@epa.gov;* or by fax at 202–564–1624. Additional information about the NEJAC is available at: *www.epa.gov/environmentaljustice/nejac.*

Registration is required for all participants. Pre-registration by Noon, Eastern Standard Time, on Monday, September 22, 2014, for all attendees is highly recommended. Because this NEJAC meeting will be held in government space, we strongly encourage you to register early. Space limitations may not allow us to accommodate everyone who is interested in attending. Priority admission will be given to pre-registered participants. To register, visit *http://nejac-oct2014.eventbrite.com.* Please state whether you would like to be put on the list to provide oral public comment. Please specify whether you are submitting written comments before the Noon, Monday, September 22, 2014, deadline. Non-English speaking attendees wishing to arrange for a foreign language interpreter may make appropriate arrangements in writing using the above telephone number.

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee shall provide independent advice to the EPA Administrator about areas that may include, among other things, ''advice about broad, cross-cutting issues related to environmental justice, including environment-related strategic, scientific, technological, regulatory, and economic issues related to environmental justice.''

The meeting shall be used to discuss and receive comments about the nexus between sustainability and environmental justice. Specifically, the NEJAC will discuss these primary areas: (1) Climate Adaptation; (2) Community Sustainability; (3) Agency Efforts on Climate Adaptation; and (4) Engaging Low-Income, Minority, Tribal and Indigenous Communities to address climate change. In addition, the meeting will include updates from several NEJAC work groups, as well as discussions about the NEJAC work plan for 2014–2015.

A. Public Comment: Individuals or groups making oral presentations during the public comment periods will be limited to a total time of seven minutes. To accommodate the large number of people who want to address the NEJAC, only one representative of an organization or group will be allowed to speak. If time permits, multiple representatives from the same organization can provide comment at the end of the session. In addition, those who did not sign up in advance to give public comment can sign up on site. The suggested format for written public comments is as follows: Name of Speaker; Name of Organization/Community; City and State; Email address; and a brief description of the concern and what you want the NEJAC to advise EPA to do. Written comments received by Noon, Eastern Standard Time, on Monday September 16, 2014, will be included in the materials distributed to the members of the NEJAC. Written comments received after that date and time will be provided to the NEJAC as time allows. All information should be sent to the mailing address, email address, or fax number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

B. Information About Services for Individuals With Disabilities: For information about access or services for individuals with disabilities, please

contact Jasmin Muriel, at (202) 564–4287 or via email at *Muriel.Jasmin@EPA.gov.* To request special accommodations for a disability, please contact Ms. Muriel at least four working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or phone/fax number listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: September 3, 2014.

Sherri P. White,

Designated Federal Officer, National Environmental Justice Advisory Council.

[FR Doc. 2014–21823 Filed 9–11–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9916–53–OECA]

National Environmental Justice Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Nominations to the National Environmental Justice Advisory Council (NEJAC).

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its National Environmental Justice Advisory Council (NEJAC). The NEJAC was chartered to provide advice regarding broad, crosscutting issues related to environmental justice. This notice solicits nominations to fill approximately eight (8) vacancies for terms through June 15, 2017. To maintain the representation outlined by the charter, nominees will be selected to represent: Academia (1 vacancies); grassroots community-based organizations (1 vacancy); non-governmental/environmental organizations (2 vacancies); State government agencies (1 vacancy); business and industry (1 vacancy) and indigenous community-based organizations (2 vacancies). Vacancies are anticipated to be filled by May 2015. Sources in addition to this **Federal Register** Notice also may be utilized in the solicitation of nominees.

DATES: Nominations should be submitted in time to arrive no later than October 25, 2014.

ADDRESSES: Submit nominations electronically with the subject line NEJAC Membership 2014 to *parris.scott@epa.gov.* You also may submit nominations by mail to: Scott Parris, NEJAC Membership Outreach Coordinator, Office of Environmental Justice, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., (MC 2201A), Washington, DC 20460. Non-electronic submissions must follow the same format and contain the same information. The Office of Environmental Justice will acknowledge receipt of nominations.

FOR FURTHER INFORMATION CONTACT: Sherri P. White, Designated Federal Officer, NEJAC, U.S. EPA; telephone (202) 564–2462; fax: (202) 564–1624.

SUPPLEMENTARY INFORMATION: The NEJAC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the NEJAC in 1993 to provide independent consensus advice to the EPA Administrator about a broad range of environmental issues related to environmental justice. The NEJAC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations.

The Council consists of 26 members (including a Chairperson) appointed by EPA's Administrator. Members serve as non-federal stakeholders representing: four (4) from academia, three (3) from business and industry; six (6) from community based organizations; six (6) from non-governmental/environmental organizations; four (4) from state and local governments; and three (3) from tribal governments and indigenous organizations, of which one member serves as a liaison to the National Tribal Caucus. Members are appointed for three (3)-year terms with the possibility of reappointment to a second term.

The NEJAC usually meets face-to-face twice a year, generally in the Spring and the Fall. Additionally, members may be asked to participate in teleconference meetings or serve on Work Groups to develop recommendations, advice letters, and reports to address specific policy issues. The average workload for members is approximately 5 to 8 hours per month. EPA provides reimbursement for travel and other incidental expenses associated with official government business.

Nominations: Any interested person and/or organization may nominate qualified individuals for membership. The EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, the agency encourages nominations of women and men of all racial and ethnic groups. All nominations will be fully considered, but applicants need to be aware of the specific representation sought as outlined in the **Summary** above. In addition, EPA is seeking nominees with knowledge in community sustainability, public health and health disparities, climate change adaptation, land use and equitable development, environmental sociology and social science, and environmental financing.

Other criteria used to evaluate nominees will include:

- The background and experience that would help members contribute to the diversity of perspectives on the committee (e.g., geographic, economic, social, cultural, educational background, professional affiliations, and other considerations
- Demonstrated experience with environmental justice and community sustainability issues at the national, state, or local level;
- Excellent interpersonal and consensus-building skills
- Ability to volunteer time to attend meetings 2–3 times a year, participate in teleconference meetings, attend listening sessions with the Administrator or other senior-level officials, develop policy recommendations to the Administrator, and prepare reports and advice letters
- Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals are encouraged to self-nominate. Nominations can be submitted in electronic format (preferred) following the template available at *http://epa.gov/environmentaljustice/nejac/index.html#Membership.* To be considered, all nominations should include:

- Current contact information for the nominee, including the nominee's name, organization (and position within that organization), current business address, email address, and daytime telephone number.
- Brief Statement describing the nominees interest in serving on the NEJAC
- Résumé and a short biography (no more than 2 paragraphs) describing the professional and educational qualifications of the nominee, including a list of relevant activities, and any current or previous service on advisory committees
- Letter[s] of recommendation from a third party supporting the nomination. Letter[s] should describe how the nominee's experience and

knowledge will bring value to the work of the NEJAC.

Other sources, in addition to this **Federal Register** notice, may also be utilized in the solicitation of nominees. To help the EPA in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

Dated: September 3, 2014.

Sherri P White,

Designated Federal Officer, Office of Environmental Justice, U.S. EPA.

[FR Doc. 2014–21817 Filed 9–11–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

DEPARTMENT OF COMMERCE

[GN Docket No. 13–185; DA 14–1023]

The Federal Communications Commission and National Telecommunications and Information Administration: Coordination Procedures in the 1695–1710 MHz and 1755–1780 MHz Bands

AGENCY: Federal Communications Commission and National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Federal Communications Commission's (FCC) Wireless Telecommunications Bureau (WTB) and the National Telecommunications and Information Administration (NTIA) issue this joint public notice to provide information about Federal/non-Federal coordination in the AWS–3 bands in which Federal incumbents have spectrum assignments. We jointly refine certain AWS–3 Protection Zones, reducing them from nationwide scope to more specific geographic areas. We provide information and guidance on the overall coordination process, as contemplated by the AWS–3 R&O, including informal pre-coordination discussions and the formal process of submitting coordination requests and receiving results from relevant agencies. Also, we provide refined Protection Zones for AWS–3 licenses for which proximity to certain Federal satellite uplink stations could potentially cause harmful interference into AWS–3 licensee base stations along with a streamlined option for satisfying this coordination requirement.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Washington, DC 20554 and U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Janet Young at (202) 418–0837 or *janet.young@fcc.gov,* Broadband Division, Wireless Telecommunications Bureau, FCC, or Gary Patrick, Office of Spectrum Management, NTIA, at (202) 482–3650 or *gpatrick@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of a public notice of the coordination procedures in the 1695–1710 MHz and 1755–1780 MHz Bands, jointly by the Federal Communications Commission and the United States Department of Commerce, National Telecommunications and Information Administration, GN Docket No. 13–185, DA 14–1023, released on July 18, 2014.

Synopsis

I. Introduction

1. In March 2014, the Federal Communications Commission (Commission or FCC) adopted new rules that will make available significantly more spectrum for Advanced Wireless Services (AWS). See *Report and Order,* GN Docket No. 13–185, 29 FCC Rcd 4610 (2014) (recon. pending), 79 FR 32366 (June 4, 2014) (*AWS–3 R&O*). The rules are a milestone in providing commercial access to new spectrum bands through a spectrum-sharing arrangement with incumbent federal users. As part of that arrangement, the Commission's AWS–3 rules require successful coordination with Federal incumbents prior to operation in Protection Zones (also referred to here as coordination zones). By this public notice the Commission, through its Wireless Telecommunications Bureau, and the National Telecommunications and Information Administration (NTIA) provide (i) information for potential bidders in the AWS–3 auction and (ii) guidance to the ultimate AWS–3 licensees and the affected Federal incumbents regarding coordination between Federal and non-Federal for shared use of the 1695–1710 MHz and 1755–1780 MHz bands. The joint nature of this public notice reflects intersecting jurisdictions of the Commission (commercial users) and NTIA (Federal users) in these bands. In the *AWS–3 R&O,* the Commission authorized and directed its Wireless Telecommunications Bureau to work with NTIA staff, in collaboration with affected Federal agencies or Commerce Spectrum Management Advisory Committee (CSMAC) members, to develop this joint FCC and NTIA public notice with information on coordination procedures in the 1695–1710 MHz and 1755–1780 MHz bands. *AWS–3 R&O* at, 29 FCC Rcd at 4693 para. 221.

2. The public notice proceeds as follows. In section II, we provide general background information about Federal/non-Federal coordination in the AWS–3 bands in which Federal incumbents have spectrum assignments. In section III, we jointly refine certain AWS–3 Protection Zones, reducing them from nationwide scope to more specific geographic areas. Section IV provides information and guidance on the overall coordination process, as contemplated by the *AWS–3 R&O,* including informal pre-coordination discussions and the formal process of submitting coordination requests and receiving results from relevant agencies. Section V provides refined Protection Zones for AWS–3 licenses for which proximity to certain Federal satellite uplink stations could potentially cause harmful interference into AWS–3 licensee base stations along with a streamlined option for satisfying this coordination requirement. The Appendices to this public notice are formatted tables, images, and a sample coordination agreement that are available online at: *www.ntia.doc.gov/category/aws-3-transition* and *https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1023A1.pdf.*

II. Background

3. *AWS–3 R&O.* On March 31, 2014, the Commission adopted rules governing commercial use of spectrum in the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz bands making 65 megahertz of spectrum available for flexible use wireless services, including mobile broadband. The Commission's action was another step in implementing the Congressional directive in Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) to make more spectrum available for flexible uses. It was also the culmination of years of effort to facilitate commercial access to some of these bands through spectrum-sharing arrangements with incumbent Federal users. In particular, 40 megahertz in the band is being made available for commercial use pursuant to collaboration among the wireless industry and Federal agencies facilitated in part by NTIA, which chartered the Commerce Spectrum Management Advisory Committee (CSMAC) to advise it on these matters.

4. *Information on Incumbent Federal operations.* Information about incumbent Federal operations is generally available through the affected agencies' Transition Plans. The publicly

available Transition Plans are published at *www.ntia.doc.gov/category/aws-3-transition.* NTIA and CSMAC reports are also available through this Web site. By way of background, Federal incumbents in the 1695–1710 MHz and 1755–1780 MHz bands were required to develop and submit Transition Plans to implement relocation or sharing arrangements and affected Federal agencies have recently done so. Transition Plans contain information on these Federal systems including the frequencies used, emission bandwidth, system use, geographic service area, authorized radius of operation, and estimated timelines and costs for relocation or sharing. Affected agencies are permitted to redact from the publicly-released transition plans classified national security information and ''other information for which there is a legal basis for nondisclosure and the public disclosure of which would be detrimental to national security, homeland security, or public safety or would jeopardize a law enforcement investigation.'' *See AWS–3 R&O,* 29 FCC Rcd at 4694 para. 224 & n.673 (citing 47 U.S.C. 923(h)(7), 929). Each Federal entity that requested pre-auction funds attested in its Transition Plan that it will, during the transition period, make available to a non-Federal user with appropriate security clearances any classified information regarding the relocation process, on a need-to-know basis, to assist the non-Federal user in the relocation process with the eligible Federal entity or other eligible Federal entities. *Accord* 47 U.S.C. 928(d)(3)(B)(ii)(4). *See also* NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual), Annex O at O.4.1 para. 3, O.6.1, and at Appendix: Common Format for Transition Plans, Tab B.

5. Generally, incumbent Federal operations in 1695–1710 MHz and 1755–1780 MHz include the following categories of systems:

• *1695–1710 MHz.* This band is used by the meteorological satellite (MetSat) service (restricted to space-to-Earth operation). Details on the protected 47 Federal MetSat operations that will continue to be protected on a primary basis in the 1675–1695 MHz band and a co-primary basis in the 1695–1710 MHz band are publicly available in the relevant Transition Plans.

• *1755–1780 MHz.* Federal assignments in this band (and for purposes of describing the AWS 3 coordination requirements that the Commission adopted in the AWS–3 R&O) can be grouped into two categories: (1) United States and Possessions (USP) assignments; and (2) non-USP assignments. (In Federal spectrum management, the term ''non-USP'' can refer to operations outside of the United States and Possessions, but in this public notice the term ''non-USP'' refers to assignments that are not Federal USP assignments as described above.)

○ *Federal USP assignments.* Some Federal incumbents have assignments in the band that specify an area of transmission, reception, or operation as ''USP.'' Section G.2 of Annex G of the NTIA Manual contains abbreviations used in the Transmitter and Receiver State/County fields of the Government Master File (GMF). The abbreviation ''USP'' is for use only when transmitting and/or receiving throughout the United States and Possessions, *id.* G.2.3, which ''includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions (but less the Canal Zone).'' NTIA Manual, 6.1 Definitions. Such assignments authorize agencies to operate particular radio systems anywhere they are needed throughout the United States and Possessions. Put differently, incumbent use may not be simultaneous nationwide and incumbents may be able to share frequencies in some areas prior to relocating all operations from the band. All USP assignments will be transitioned out of the 1755–1780 MHz band. *See* 47 CFR 27.1134(f)(1). *See also* NTIA Manual 9.8.2 (Application Data Requirements), Field 39 (Circuit Remarks) (e) (Authorized States) (allowing the transmitter and receiver antenna location fields to describe an area of operation as USP if within four or more States and the area includes a Possession).

☐ The specific areas where incumbents operate under their USP assignments are redacted from publicly released Transition Plans.

☐ The Commission's rules require each AWS–3 licensee, prior to its first operations in its AWS–3 licensed area, to reach a coordination arrangement with each Federal agency that has a USP assignment in the band on an operator-to-operator basis.

☐ This public notice does not change this requirement—the refined Protection Zones discussed in sections III and V are inapplicable to this requirement.

☐ There are 21 USP assignments including one telemetry assignment, two robotics assignments, and 18 video assignments. The incumbent agencies are: Department of Homeland Security, Department of Justice, National Aeronautics and Space Administration, Department of the Treasury, Department of Housing and Urban Development (HUD), United States Agency for International Development (USAID), and Department of Veterans Affairs. Updated contact information for each of these agencies is available at *www.ntia.doc.gov/category/aws-3-transition.* HUD and USAID each specify USP assignments in their Transition Plans under relocation timelines of 0–1 month, making coordination arrangements unnecessary.

○ *Federal non-USP assignments.* Most Federal assignments specify particular areas of operation within the United States (rather than USP).

☐ Details on incumbent Federal agencies' operations are generally available in the relevant, publicly-released Transition Plans.

☐ Most non-USP assignments will be transitioned out of 1755–1780 MHz, with the exception of the six sites in which Joint Tactical Radio Systems may operate, the two polygons within which the Air Combat Training System may operate, and the 25 sites where Federal earth stations may transmit. *See* 47 CFR 2.106 footnote US91.

☐ Most details of Department of Defense (DoD) operations are redacted from the publicly released Transition Plans, but will be made available in a modified format with slightly more generalized details through a separate release. As noted above, affected agencies are permitted to redact from the publicly-released transition plans classified national security information and ''other information for which there is a legal basis for nondisclosure and the public disclosure of which would be detrimental to national security, homeland security, or public safety or would jeopardize a law enforcement investigation.'' *See* 47 U.S.C. 929.

☐ The Commission's rules require that, prior to operating in a Protection Zone a base station that enables mobiles and portables to transmit in the 1755–1780 MHz band, AWS–3 licensees successfully coordinate with each Federal incumbent.

☐ In the *AWS–3 R&O,* the Commission stated that, for the 1755–1780 MHz band, the default Protection Zones are nationwide.

☐ This public notice refines the nationwide default Protection Zones. The refined Protection Zones (discussed in sections III and V below and Appendices B and C, respectively) are intended in part to provide information to potential AWS–3 licensees on Federal operations in the 1755–1780 MHz band without disclosing non-public information about these systems.

6. The Transition Plans generally provide detailed information about

these systems, including the transition timelines. After reaching an arrangement with each USP agency, AWS–3 licensees are permitted to operate anywhere in these bands outside of Protection Zones that protect Federal incumbents during transition and on a permanent basis for systems that remain in the bands indefinitely. AWS–3 licensees may expect that the magnitude of the requirement to coordinate will decrease over time as agencies execute their Transition Plans. We describe the specific coordination requirements below.

III. Refined Protection Zones Establishing Areas Where AWS–3 Licensees Must Successfully Coordinate With Federal Incumbents Operating Under Non-USP Assignments

7. In this section and in section V, we discuss refined Protection Zones for coordination with Federal agencies operating under non-USP assignments in the 1695–1710 MHz and 1755–1780 MHz bands. As described in section II above, for USP assignments, AWS–3 licensees are required to reach a coordination arrangement with each Federal agency that has a USP assignment in 1755–1780 MHz on an operator-to-operator basis prior to first operation in its licensed area. The refined Protection Zones in this public notice are organized into two sections depending on their purpose. The Protection Zones discussed in this section III (with details in Appendices A & B) are intended to protect incumbent Federal operations from AWS–3 operations in the 1695–1710 MHz band up to 30 dBm EIRP and in the 1755–1780 MHz band up to 20 dBm EIRP. The Protection Zones discussed in section V (with details in Appendix C) are intended to address potential interference into AWS–3 base stations in proximity to certain Federal satellite uplink stations. The refined Protection Zones in sections III and V are inapplicable to coordination with USP agencies.

8. In the *AWS–3 R&O,* the Commission adopted rules that require AWS–3 licensees to successfully coordinate with incumbent Federal users before operating within coordination zones (as noted above, also referred to here as Protection Zones). Several statutory provisions encourage negotiation, coordination, and spectrum sharing between non-Federal users and Federal entities. Under the *AWS–3 R&O,* AWS–3 licensees are permitted to operate anywhere outside of the Protection Zones without prior coordination with non-USP incumbents. There are two Federal/non-Federal coordination scenarios: (1) Temporary sharing prior to Federal relocation from the band under an approved Transition Plan; and (2) permanent sharing where incumbent Federal operations will remain in the band indefinitely. Under the first scenario, AWS–3 licenses will be conditioned, by rule, on not causing harmful interference to relocating Federal operations. Under both scenarios the Commission's rules require successful coordination with Federal incumbents prior to operation in Protection Zones. Under the terms of the *AWS–3 R&O,* AWS–3 licensees will be permitted to operate in any area: Outside of a Protection Zone for any Federal operation in 1695–1710 MHz or 1755–1780 MHz during the transition of any system; outside the Protection Zones for systems remaining in the bands permanently; and within the Protection Zone of a transitioning or permanent system subject to successful coordination. AWS–3 R&O, 29 FCC Rcd at 4690–93 paras. 216–220. For coordination with Federal incumbents operating under non-USP assignments, AWS–3 licensee requests to operate base stations inside Protection Zones (that enable mobiles and portables to transmit in the 1695–1710 MHz or 1755–1780 MHz bands) trigger the coordination requirement.

9. Federal use of the radio spectrum is generally governed by NTIA while non-Federal use is governed by the Commission. *See* 47 U.S.C. 305(a), 902(b)(2)(A). As such, consistent with the approach used for AWS–1, the Commission determined in the *AWS–3 R&O* that that any guidance or details concerning Federal/non-Federal coordination including, if possible, revisions to the nationwide coordination zones, should be issued jointly by NTIA and the Commission. In this regard, the Commission authorized and directed its Wireless Telecommunications Bureau to work with NTIA staff, in collaboration with affected Federal agencies or CSMAC members, to develop a joint FCC and NTIA public notice with information on coordination procedures in the 1695–1710 MHz and 1755–1780 MHz bands. This public notice was developed under that direction. *AWS–3 R&O,* 29 FCC Rcd at 4693 para. 221. In adopting final rules in the AWS–3 R&O, the Commission discussed relevant statutes and related considerations that led to its determination to establish certain default, nationwide Protection Zones that would be refined or shrunk to the extent that NTIA, representing the recipients of this protection (*i.e.,* the Federal users), determined that the full extent of this protection was not required. *AWS–3 R&O,* 29 FCC Rcd at 4645 para. 91; 47 CFR 2.106 footnotes US88, US91, 27.1134(c), (f). In particular, the Commission noted that NTIA has authority to assign frequencies to Federal users and to amend, modify, or revoke such assignments; *AWS–3 R&O,* 29 FCC Rcd at 4693 para. 221 citing 47 U.S.C. 305(a) (stating that Federal stations are not subject to provisions of sections 301 (FCC licensing authority) or 303 (FCC general powers) of the Act), 902(b)(2)(A); and that the Commission must condition AWS–3 licenses on not causing harmful interference to a relocating Federal entity prior to NTIA's termination of such entity's authorization, see supra note 20. *See also AWS–3 R&O,* 29 FCC Rcd at 4690 para. 214. NTIA's determination must also account for the requirement of current law that ''the Secretary of Commerce, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff jointly certify . . . that such alternative band or bands provides comparable technical characteristics to restore essential military capability that will be lost as a result of the band of frequencies to be so surrendered.'' *Id. See also* 47 U.S.C. 923(j) and NTIA, Notification to Congress Pursuant to 47 U.S.C. 923(j)(2) Regarding the 1695–1710 MHz and 1755–1780 MHz (AWS–3) Spectrum Bands (Jun. 4, 2014), available at *http://go.usa.gov/XxHV.* Specification of the refined Protection Zones outlined below, which reflects the determination that NTIA has now made, thus implements provisions already incorporated in the Commission's AWS–3 rules pursuant to notice and comment rulemaking. Additionally, NTIA's directives to Federal agencies regarding Protection Zones (and coordination requirements) is a matter for NTIA and not the Commission. *See, e.g.,* 47 U.S.C. 923(g)(6) (establishing that NTIA shall take such actions as necessary to ensure the timely relocation and timely implementation of arrangements for the sharing of frequencies). For this reason, further notice to and comment by non-Federal users to the Commission would be impracticable and unnecessary as well as contrary to the public interest in negotiating agreement among the Commission, NTIA, and multiple Federal users on an expedited basis, pursuant to the timetable for licensing of the AWS–3 spectrum required by the Spectrum Act. *See* 47 U.S.C. 1451(b). Nor does this reduction of Protection Zones involve any ''major policy proposals that are not classified and that

involve spectrum management,'' requiring NTIA to provide for further public comment and review. *See* 47 U.S.C. 903(b)(2). *See also* 78 FR 52097 (2013) (revisions to NTIA Manual are subject to good cause exception of Administrative Procedure Act because they apply only to Federal agencies); see also 5 U.S.C. 553(a)(2).

10. We note that in the *AWS–3 R&O,* the Commission declined to specify that licensees deploy systems using a particular technology—such as LTE—and instead sought to adopt technical and operational requirements as necessary to protect against harmful interference or effectuate other compelling public interest objectives. The Commission recognized that CSMAC assumed baseline LTE uplink characteristics to determine Protection Zones—in particular a 20 dBm maximum EIRP—and concluded that this did not require adoption of LTE for all purposes. *AWS–3 R&O,* 29 FCC Rcd at 4649–50 para. 105 (''Where the rules that we adopt today differ from proposed rules that reflected CSMAC's assumptions, we also adopt corresponding changes to the coordination zones.''). This determination was made consistent with the Commission's policy of supporting flexible use. The Commission noted if a licensee decides to use a technology other than LTE, the licensee will still be subject to the Commission's technical rules. The Commission also noted that the required coordination process could address any issues that may arise if the use of a different technology complies with the Commission's rules but nonetheless poses a greater risk of interference to incumbent Federal operations. As such, AWS–3 licensees deploying technology that differs from CSMAC's baseline LTE uplink assumptions may need to address as part of coordination whether such operations pose a greater risk of interference to incumbent Federal operations than the baseline LTE uplink characteristics that CSMAC assumed. If relevant to the technical analysis, the licensee may need to provide technical data regarding its base stations outside of but nearby a relevant Protection Zone, but the licensee is not required to successfully coordinate such stations.

A. Refinements to the 1695–1710 MHz Protection Zones

11. Forty-seven Federal earth stations will continue to receive satellite signals in the 1675–1695 MHz band on a primary basis and on a co-primary basis in the 1695–1710 MHz band and will continue to do so indefinitely. 47 CFR 2.106 footnote US88. There are 13 Protection Zones listed in footnote US88(b)(1) for Federal earth stations receiving in the band 1695–1710 MHz and 14 Protection Zones listed in footnote US88(b)(2) for Federal earth stations receiving in the band 1675–1695 MHz. In the *AWS–3 R&O,* the Commission adopted rules establishing 27 Protection Zones that encompass the 47 earth stations. AWS–3 licensees must successfully coordinate prior to operating a base station in a Protection Zone that enables mobile and portable AWS 3 stations to operate up to 20 dBm EIRP. *See* 47 CFR 2.106 footnote US88, 27.1134(c).

12. Appendix A of this public notice sets forth the 27 Protection Zones for operations up to 20 dBm as specified in the Commission's rules, which the Commission adopted in accordance with NTIA's recommendation endorsing these zones in the CSMAC WG–1 Final Report (WG–1). Appendix A also includes refined Protection Zones (larger than the zones established for operations up to 20 dBm but substantially smaller than nationwide zones) for operations above 20 dBm up to the maximum of 30 dBm EIRP permitted under the Commission's rules. These refined Protection Zones for operations above 20 dBm use the same 27 center points that define the 27 zones for operations up to 20 dBm. To account for the higher operating power, however, the radius of the Protection Zone around each center point is larger.

13. Aside from the 47 Federal earth stations that will operate on a primary (1675–1695 MHz) or co-equal primary (1695–1710 MHz) basis with AWS–3 licensees, all other Federal Earth stations operate on a secondary basis. 47 CFR 2.106 footnote US88(b). Non-Federal earth stations may continue to receive MetSat data from primary Federal MetSat space stations on an unprotected basis. *See AWS–3 R&O,* 29 FCC Rcd at 4684–85 para. 199.

B. Refinements to the 1755–1780 MHz Protection Zones for Coordination With Federal Incumbents With Non-USP Assignments

14. Some incumbent Federal systems in 1755–1780 MHz will be relocating from the band over a period of time while others will remain in the band indefinitely. AWS–3 licensees must successfully coordinate with both types of Federal incumbents prior to operating a base station in a Protection Zone that enables mobiles and portables to transmit in the 1755–1780 MHz band. Coordination with agencies that hold USP assignments is discussed in section II above. For agencies that hold non-USP assignments, the *AWS–3 R&O* established default nationwide coordination requirements for any proposed base station that enables mobiles and portables to operate in the band unless otherwise agreed in writing among all relevant parties, or if the FCC and NTIA jointly announce refined protection zones for base stations that enable mobiles and portables to operate in the band up to 20 dBm EIRP. This public notice announces such refined Protection Zones.

15. We note that some incumbent Federal operations have a potential to interfere with AWS–3 base stations located outside of the refined Protection Zones. Under the rules that the Commission adopted in the *AWS–3 R&O,* AWS–3 licensees must accept harmful interference from these incumbent Federal operations. *See, e.g.,* 47 CFR 27.1134(f) (''[t]he Federal Government operates communications systems in the 1755–1780 MHz band. Certain systems are expected to continue to operate in the band indefinitely. All other operations will be relocating to other frequencies or otherwise cease operations in the 1755–1780 MHz band in accordance with 47 CFR part 301. Until such a time as Federal operations in the 1755–1780 MHz bands vacate this spectrum, AWS licensees shall protect such systems and must accept any interference received from these Federal operations. *See* 47 CFR 2.106, US note 91 of this chapter for details.''). With one exception, these zones are intended to protect incumbent Federal operations from AWS–3 operations. (We discuss the exception in section V below and Appendix C to this public notice (refined protection zones for 25 Federal earth stations).) In the Auction 97 Comment public notice, the Wireless Telecommunications Bureau proposed to require an applicant to participate in the auction to acknowledge that its operations in the 1755–1780 MHz band may be subject to interference from Federal systems, that the applicant must accept interference from incumbent Federal operations, and that the applicant has considered these risks before submitting any bids for applicable licenses in the auction. Auction of Advanced Wireless Services Licenses Scheduled for November 13, 2014; Comment Sought on Competitive Bidding Procedures for Auction 97, AU Docket No. 14–78, *Public Notice,* 29 FCC Rcd 5217, 5225 para. 24 (WTB 2014).

16. Below we describe the refined Protection Zones in 1755–1780 MHz for non-USP DoD operations and non-USP operations by all other affected agencies.

DoD Assignments. Appendix B–1 provides the reference for refined

Protection Zones for coordination of AWS–3 base stations (that enable mobiles and portables to transmit in the band up to 20 dBm EIRP) with incumbent DoD operations depicted by system type (DoD Workbook, Tab 1). This reference will link to a data table that DoD is finalizing that will map the coordination requirements in each five-megahertz block over census tracts. A census tract is ''[a] small, relatively permanent statistical subdivision of a county delineated by a local committee of census data users for the purpose of presenting data. Census tracts nest within counties, and their boundaries normally follow visible features, but may follow legal geography boundaries and other non-visible features in some instances, Census tracts ideally contain about 4,000 people and 1,600 housing units. *http://www.census.gov/glossary/#term_Censustract.* There are 73,057 census tracts for the 50 states and the District of Columbia (2010 tally does not include Puerto Rico and the Island Areas). *http://www.census.gov/geo/maps-data/data/tallies/national_geo_tallies.html.* The U.S. Census Bureau provides references, including links to mapping files. *See, e.g., http://www.census.gov/geo/education/pdfs/CensusTracts.pdf.* The use of census tracts and five-megahertz blocks should allow licensees to analyze the data for all AWS–3 licenses. The distances used in this analysis were equal to or, in some cases, substantially shorter than the CSMAC recommendation. The electronic version will include Transition Plan timelines for those impacted systems along with documentation describing assumptions (*e.g.,* operational area and coordination zone) used to determine the Protection Zone. The information will be as specific as possible, accounting for the need to protect classified and other sensitive information and in a format that can be manipulated and imported into mapping and other data analysis tools.

17. As noted above, even in areas where coordination with Federal non-USP incumbents is not required, AWS–3 licensees may still be susceptible to harmful interference from these incumbent Federal operations. AWS–3 licensees must accept this interference and design their systems to overcome or avoid it in the event that they receive it. The workbook will include a second data table mapping areas within which there is a higher possibility that AWS–3 licensees will receive harmful interference from non-ground based DoD operations (DoD Workbook, Tab 2). This data table will be purely informational and will not define the Protection Zones where successful coordination is required. AWS–3 licensees are required by rule to accept harmful interference from these Federal operations. (*See* quotation from 47 CFR 27.1134(f) above.) We also note that AWS–3 licensees are required to comply with all other applicable rules governing their operations. The DoD Workbook, Tab 2, will identify the areas within which AWS–3 licensees may have a higher expectation of interference from incumbent Federal operations. These will include areas outside of Protection Zones and areas surrounding 25 uplink Earth stations for which coordination is required for AWS–3 base stations located in the refined Protection Zones discussed in section V and Appendix C.

18. *Non-DoD Assignments.* Appendix B–2 provides refined Protection Zones for coordination of AWS–3 base stations (that enable mobiles and portables to transmit in the band up to 20 dBm EIRP) with certain non-DoD incumbent Federal operations. The locations and other pertinent information for these systems are available in the publicly released Transition Plans. These refined Protection Zones are based on distances that are consistent with the Commission's AWS rules to protect non-Federal microwave systems to minimize potential coordination/transaction costs while protecting against harmful interference into protected Federal operations.

19. The refined Protection Zones in Appendix B apply only to AWS–3 base stations that enable mobiles and portables to operate in the 1755–1780 MHz band up to 20 dBm EIRP. The Protection Zone remains nationwide for base stations that enable mobiles and portables to operate in 1755–1780 MHz at powers above 20 dBm EIRP. *AWS–3 R&O,* 29 FCC Rcd at 4645 para. 91. Special requirements near satellite earth stations in the 1761–1780 MHz band are discussed in section V below and Appendix C.

IV. Coordination Process Guidance

20. The purpose of coordination is to avoid harmful interference to protected Federal operations and missions in the 1695–1710 MHz and 1755–1780 MHz bands while expediting access to and maximizing commercial use of the spectrum. The coordination guidance described below applies to all AWS–3 licensees seeking to operate in the 1695–1710 MHz band or the 1755–1780 MHz band, unless the AWS–3 licensee and the relevant Federal incumbents have agreed otherwise. Below is a general description of the process and is not intended to encompass all coordination requirements and scenarios. AWS–3 licensees and Federal incumbents must use good faith throughout the coordination process, regardless of whether they use the steps below or whether all relevant parties have agreed to their own negotiated coordination arrangement. The Commission's AWS–3 rules contemplate ''a good faith effort from both the AWS–3 licensees and the Federal incumbents to share information about their systems, agree to appropriate interference methodologies, and communicate results so as to facilitate commercial use of the band.'' *AWS–3 R&O,* 29 FCC Rcd at 4693 para. 222. This extends to AWS licensees sharing information with Federal incumbents and cooperating once Federal incumbents develop and implement real-time spectrum monitoring systems around existing Federal operations protected in the 1695–1710 MHz and adjacent bands.

A. Contact

21. Federal incumbents' Transition Plans identify a point of contact within each agency that an AWS–3 licensee may contact to initiate coordination. In addition, the Institute for Telecommunication Sciences (ITS) within NTIA and DoD are creating online portals through which an AWS–3 licensee may initiate coordination for relevant systems (collectively referred to here as the Portals). The ITS Portal will support coordination for all Federal incumbents in the 1695–1710 MHz band. The DoD Portal will support coordination for all DoD incumbents in the 1755–1780 MHz band and may over time accommodate other Federal incumbent systems in the band.

B. Informal Discussions

22. Before an AWS–3 licensee submits a formal coordination request, it may share draft proposals and/or request that Federal agency coordination staff discuss draft coordination proposals. These discussions are voluntary, informal, and non-binding and can begin at any time. AWS–3 licensees may discuss their proposed deployment and seek guidance on appropriate measures to ensure that electromagnetic compatibility (EMC) analyses produce positive results. Further, AWS–3 licensees and Federal incumbents may discuss the scope and extent of temporary sharing for those Federal assignments that may share with AWS–3 licensees on a temporary basis. AWS–3 licensees and agency representatives may also, on an operator-to-operator basis, develop an analysis methodology that reflects the characteristics of the

licensee's proposed deployment and the Federal agency's operation. These discussions can also involve developing a process for identification and resolution of interference.

23. These discussions are intended to allow the Federal incumbent and AWS–3 licensee to share information about their respective system designs, and identify any potential coordination issues prior to the filing of a formal coordination request. We make clear that these discussions are non-binding, and the Federal agencies involved are not, unless they specify, making any determination regarding the outcome of the formal coordination. We strongly encourage parties to use informal, non-binding discussions to minimize or resolve basic methodological issues upfront before the AWS–3 licensee submits a formal coordination request.

C. Formal Coordination

24. We provide guidance for the formal coordination process below. This description is general, and the process may differ between agencies and is subject to additional modification by the agencies and licensees as agreed to on an operator-to-operator basis. We expect and encourage the Federal agencies and AWS–3 licensees to engage in good faith coordination.

1. Initiation

25. Coordination shall be initiated by the AWS–3 licensee formally requesting access within a temporary or permanent Protection Zone and by contacting each USP incumbent (see section II above) prior to first operations in each AWS–3 license area. This request can be made directly through the agency point of contact specified in the Transition Plan, through the DoD Portal (which may accommodate other agencies), or through the ITS Portal, depending on system type (see section IV.A above.) The AWS–3 licensee must set up its Portal account(s) and, once established, the AWS–3 licensee will receive a user guide(s) and training on the use of the Portal(s).

2. Timing

26. *No formal coordination for nine (9) months.* Unless otherwise agreed among an AWS–3 licensee and the relevant Federal incumbent(s), Federal incumbents are not obligated to entertain formal coordination requests until nine (9) months after the date of the auction closing public notice. AWS–3 licensees may, as described above, request informal discussions during this time.

27. *Timing generally.* After the first nine (9) months following the close of the auction, Federal incumbents are expected to timely review and respond to formal coordination requests. We encourage licensees and incumbents, through informal discussions, to serialize formal coordination requests as appropriate to avoid an overwhelming influx of coordination requests at the conclusion of the nine (9) month quiet period. We also encourage licensees and incumbents to discuss, as appropriate, extended review timelines to the extent that the incumbents' coordination resources are exhausted due to a large number of requests within a short time period after the quiet period. This will help maximize the quick and efficient review of coordination requests.

28. When a licensee submits a formal request, the Federal point of contact will affirmatively acknowledge receipt of the request within five (5) calendar days after the date of submission. Within ten (10) calendar days after the submission date, Federal staff will notify the AWS–3 licensee whether the request is complete or incomplete. Unless the Federal agency finds the request incomplete or the agency and AWS–3 licensee agree to a different timeline, the Federal response (the results letter discussed below) is due within sixty (60) calendar days after the deadline for the notice of completeness.

29. Unless otherwise agreed in writing, the requirement to reach a coordination arrangement with each agency that has a USP assignment (discussed above) and the requirement to successfully coordinate each base station proposed within a Protection Zone with each agency that has a non-USP assignment is satisfied only by obtaining the affirmative concurrence of the relevant incumbents. These requirements are not satisfied by omission: If a Federal agency does not timely respond, AWS–3 licensees should contact NTIA for assistance.

30. *Special temporary authority.* Section 1.931 of the Commission's rules, 47 CFR 1.931 governs applications for special temporary authority (STA). In the Wireless Telecommunications Services, carriers may request STAs to operate new or modified equipment in circumstances requiring immediate or temporary use of a station. STA requests must contain complete details about the proposed operation and the circumstances that fully justify and necessitate the grant of STA. The Commission coordinates non-Federal STA requests for operations in Federal or shared Federal/non-Federal bands with NTIA, which in turn typically provides the incumbent Federal agencies a short timeframe to object or be deemed to have concurred.

31. Applications for STAs in the 1695–1710 MHz and 1755–1780 MHz bands (for operations that require successful coordination with Federal incumbents under the rules adopted in the *AWS–3 R&O*), should, among other things, contain complete details about the proposed operation and circumstances that fully justify and necessitate the grant of STA under expedited Federal coordination. Such STA requests that do not fully justify the necessity for bypassing the timeframe and other coordination procedures in this public notice for coordination of AWS operations in the 1695–1710 MHz and 1755–1780 MHz bands with incumbent Federal agencies will be dismissed as defective without referral to NTIA.

3. Submission Information

32. To submit a formal coordination request, the AWS–3 licensee must include information about the technical characteristics for the AWS–3 base stations and associated mobile units relevant to operation within the Protection Zone. This information may be provided in a form agreed to by the agency and licensee, or if coordination takes place through the Portals, in accordance with the instructions provided in the AWS–3 Portal user's guide. The types of specific information, including the likely data fields in the Portals, include basic technical operating parameters, (*e.g.,* system technology, mobile EIRP, frequency block, channel bandwidth, site name, latitude, and longitude). As noted in section III, licensees deploying technology that differs from CSMAC's baseline LTE uplink assumptions (apart from a maximum EIRP above 20 dBm which is already accounted for in Appendices A and B) may need to address as part of coordination whether such operations pose a greater risk of interference to Federal operations than the baseline LTE uplink characteristics that CSMAC assumed. In so doing, if relevant to the technical analysis, the licensee may need to provide technical data about (but not successfully coordinate) its base stations located outside of but nearby a relevant Protection Zone. We encourage AWS–3 licensees and Federal agencies to discuss these issues informally prior to submission of formal requests. The AWS–3 Portals will accept uploaded attachments that include narratives that explain area-wide deployments.

33. AWS–3 licensees must prioritize their deployments in Protection Zones for each Federal incumbent when submitting a formal coordination request. If a licensee is seeking to

coordinate with multiple systems and/or multiple locations of operation controlled by one Federal incumbent, it must specify the order in which it prefers the Federal incumbent process the request (*i.e.,* the order of systems or geographic locations).

4. Notice of Complete or Incomplete Request

34. Once a licensee submits a formal coordination request, the relevant Federal coordination staff will review the data to ensure that it is in the proper format (if submitted through one of the Portals) and contains the proper content. Federal agency coordination staff will notify the AWS–3 licensee within ten (10) calendar days through direct communication or through the applicable Portal that its formal coordination request is complete or that it is incomplete. If the Federal agency coordination staff finds a request to be incomplete, it must identify the information the licensee must provide in as much specificity as possible. We expect that parties will work collaboratively to ensure completeness in a timely manner.

5. Coordination Analysis

35. As noted above, unless a timely notice of incomplete application is sent to the AWS–3 licensee (or the parties agree to different a timeline), the clock for the Federal response begins to run on the deadline for the notice of completeness. The Federal response is due within sixty (60) calendar days thereafter unless the AWS–3 licensee agrees otherwise. During these sixty (60) days, the Federal agency will coordinate with appropriate internal units, complete EMC analysis, and post the AWS–3 concurrence, partial concurrence with operating conditions, or denial. Each Federal incumbent is responsible for ensuring that it completes its internal, multi-level review in a timely manner. Federal incumbents are encouraged, through their designated internal coordination point of contact or through other means, to engage the AWS–3 licensee to ask any questions and discuss any issues in the event that any arise.

36. Once the designated Federal agency coordinator completes its analysis pursuant to the formal coordination request, the AWS–3 licensee and the relevant Federal agency field offices are automatically notified when a results letter is posted by the Federal user in the relevant AWS–3 Portal or, for agencies that do not use a Portal, transmitted to the AWS–3 licensee. The result of a coordination request will be concurrence, partial concurrence with operating conditions that specify the terms in which the licensee may begin operations, or denial of the request. Because of the sensitive nature of the data involved in much of the EMC analysis, the results letter may not present details of the analysis, the Federal frequency assignments affected, or timelines. In the case of partial concurrence or denial, the results letter will contain technical information objectively justifying the partial concurrence or denial. If a Federal agency does not provide the necessary information within the sixty (60) day deadline, AWS licensees may contact NTIA for assistance.

37. Upon receipt of results letter, the AWS–3 licensee may accept, conditionally accept, or object to the partial concurrence, operating conditions, or denial. If an AWS–3 licensee objects to the result, it may contact the Federal agency coordinator to propose network design modifications to help address EMC issues raised in the results letter. The Federal agency coordinator may, where feasible, review technical proposals from the AWS–3 licensee to relieve a denial, partial concurrence and/or any operating condition contained in the results letter. Once the AWS–3 licensee has revised its network design, it resubmits a formal coordination request, and the AWS–3 formal coordination process begins again.

38. We stress again, at this juncture, the benefits of informal discussions among AWS–3 licensees and Federal agencies, including during the formal coordination process. Although in many cases, Federal agency staff may be unable to provide specific information about the protected Federal operations in the results letter, and are not responsible for designing the AWS–3 system, they may offer some suggestions on how to address or mitigate the issue, given the limited information that can be made available on some Federal systems. The Freedom of Information Act exempts disclosure to the public of detailed characteristics of military systems, where specifically authorized by Executive Order to be kept secret in the interest of national defense or foreign policy. 5 U.S.C. 552(b(1). The characterization of the interference interactions of systems that conflict with an AWS–3 desired deployment plan may disclose information, either directly or by inference, that has been classified and subject to substantial restrictions on access under Executive Orders and applicable regulations. *See, e.g.,* Executive Order 13526 at part 4, 75 FR 707 (2009). Hence, notification letters sent out by the designated Federal agency coordinator will identify only site and spectrum/channel activation requirements to ensure EMC with Federal systems. If the parties agree that informal discussions would be helpful, the sixty (60)-day clock will be paused so the Federal incumbents are not forced to formally decline or condition the pending, formal coordination request within the sixty (60)-day deadline.

D. Dispute Resolution

39. *Disputes generally—during coordination or regarding a sharing agreement.* If disputes arise during the coordination process, we strongly encourage parties to negotiate in good faith to resolve them. If an AWS licensee believes a Federal incumbent is not negotiating in good faith, NTIA is available to assist and AWS–3 licensees have the option to inform the Commission. If a Federal incumbent believes that an AWS–3 licensee is not negotiating in good faith, it must nonetheless timely respond to a formal request and can seek NTIA's assistance. We also encourage parties to enter into operator-to-operator agreements that have dispute resolution provisions for any or all possible disputes. If a dispute arises between an incumbent Federal entity and an AWS–3 licensee over an operator-to-operator coordination/sharing agreement, provisions calling for informal negotiation, mediation, or non-binding arbitration efforts between the parties will help clearly define and narrow the issues for formal agency resolution by NTIA, the Commission, or jointly, as applicable. *See generally* 47 CFR 1.17. The coordination agreement in Appendix C–3 (relevant only to that system) also contains provisions that will be applicable to parties to such agreements.

40. *Certain disputes for which the law and NTIA rules allow parties to request a dispute resolution board.* If a dispute arises between a Federal entity and a non-Federal user regarding the execution, timing, or cost of the transition plan submitted by the Federal entity, the law provides that either the Federal entity or the non-Federal user may request that NTIA establish a dispute resolution board to resolve the dispute. *See* Section 113(i) of the NTIA Organization Act, as amended (47 U.S.C. 923(i)). NTIA has adopted regulations that govern the working of any dispute resolution boards established by NTIA. *See* 47 CFR part 301. Those regulations cover matters related to the workings of a board, including the content of any request to establish a board, the associated procedures for convening it, and the

dispute resolution process itself. Membership of a dispute resolution board shall be composed of a representative of OMB, NTIA, and the FCC, each appointed by the head of his or her respective agency. The OMB representative serves as the Chair of any board. With respect to the resolution of any disputes that may arise, the law and NTIA's rules require a board to meet simultaneously with representatives of the Federal entity and the non-Federal user to discuss the dispute.

41. The Spectrum Act requires a board to rule on the dispute within thirty (30) days after a party has requested NTIA to convene the board. 47 U.S.C. 923(i)(4). As stated in Annex O, ''[t]he statute's 30-day deadline for responding to formal dispute resolution requests could possibly impact a board's ability to convene, meet with the parties, and adequately address complex cases.'' NTIA Manual, Annex O at O.5.2 para. 3. *See* 47 CFR 301.200(a)(2). At the same time, however, the statute and Annex O encourage cooperation to assure timely transitions between Federal and non-Federal use of the spectrum. If and when differences surface among Federal and non-Federal parties, NTIA's rules require the parties to make good faith efforts to solve these problems on an informal basis before submitting a formal request to establish a dispute resolution board. *Id.,* Annex O. Informal negotiation, mediation, or non-binding arbitration efforts between the parties will help clearly define and narrow the issues that are necessary to bring into the formal dispute resolution process.

42. The scope of a dispute resolution request and, consequently, a board's decision, are limited by law and NTIA's regulations to matters ''regarding the execution, timing, or cost of the transition plan submitted by the Federal entity.'' 47 U.S.C. 923(i)(1). The statute authorizes a dispute resolution board to make binding decisions with respect to such matters that can be appealed to the United States Court of Appeals for the District of Columbia Circuit. 47 U.S.C. 923(i)(7). Under NTIA's rules, that dispute resolution board must also ensure that its decision does not have a detrimental impact on any national security, law enforcement, or public safety function made known to the board by an agency. To fulfill that obligation, the board may request additional written submissions from an agency regarding the impact of such a decision on the agency's operations, services, or functions. *See* 47 CFR 301.220(b). *See also* NTIA Manual, Annex O at O.5.2 para. 4.

V. Refined Protection Zones for 25 Satellite Earth Stations and Streamlined Coordination Option

43. In the sub-band 1761–1780 MHz, Federal earth stations in the space operation service (Earth-to-space) may continue to transmit at 25 sites and, under the Commission's rules, non-Federal (AWS–3) base stations must accept harmful interference caused by the operation of these Federal earth stations at these sites. *See* 47 CFR 2.106 footnote US91(b)(3), 27.11334(f). Under the Commission's rules, AWS 3 licensees must successfully coordinate with these Federal incumbents and the default Protection Zone is nationwide unless jointly refined by the FCC and NTIA. If reasonable modifications or new locations are required, these Federal incumbents must successfully coordinate with all affected AWS licensees. *See* 47 CFR 2.106 footnote US91(b)(3), 27.11334(f). The Commission noted in the *AWS–3 R&O* that ''federal incumbents remaining in the band must be able to have the flexibility to coordinate with commercial licensees if reasonable modification of existing, grandfathered operations are required in the future.'' *See AWS–3 R&O,* 29 FCC Rcd at 4693 para. 222.

44. The use of 1761–1780 MHz varies by earth station. CSMAC reports include analysis regarding representative use of the band at the sites and analysis showing the likelihood and geographical distribution of potential interference.

A. Protection Zones Near 25 Federal Satellite Uplinks

45. AWS–3 licensees must successfully coordinate with Federal incumbents prior to operating a base station in a Protection Zone that enables mobiles and portables to transmit in the 1755–1780 MHz band. 47 CFR 27.1134(f). *See also* 47 CFR 2.106 footnote US91(a), (b)(3). As described above, the default Protection Zone is nationwide unless jointly revised by the Commission and NTIA.

46. Appendix C is divided into three subparts that refine the nationwide Protection Zone applicable to AWS–3 coordination with these Federal Earth stations, and provides details of the coordination process including a streamlined option for AWS–3 licensees to consider.

47. Appendix C–1 provides geographic coordinates defining refined Protection Zones for AWS–3 coordination with these incumbents. Table 1 is geographic coordinates defining refined protection zones for AWS–3 Blocks H, I, and J (1760–1780 MHz) coordination with Federal Earth stations at 25 locations. Table 2 lists the Federal agency responsible for coordination at each SGLS site and the Economic Areas (EAs) partially or wholly contained within the associated coordination zone. Table 3 lists Economic Area (EA) and SGLS Sites. Appendix C–2 depicts maps showing these refined Protection Zones. By way of further refinement, the Protection Zones in Appendix C–1 will apply to base stations that enable mobiles and portables to transmit up to 30 dBm EIRP only in the AWS–3 Blocks H, I, and J (1760–1780 MHz). AWS–3 licensees may operate in the Block G (1755–1760 MHz) up to 30 dBm EIRP without prior coordination with these Federal Earth stations.

48. A streamlined framework is available to meet the coordination requirement associated with these 25 Protection Zones. If an AWS–3 licensee elects not to use this streamlined framework, it must successfully coordinate with the relevant Federal incumbent prior to operating a base station in a Protection Zone in Appendix C–1 that enables mobile and portables to transmit in the 1760–1780 MHz band. AWS–3 licensees requesting coordination for a Protection Zone in Appendix C–1 have a streamlined option set forth in Appendix C–3 in the form of a template coordination agreement. Once an AWS–3 licensee completes and delivers (via the DoD Portal) a signed copy of the template agreement set forth in Appendix C–3, and the Federal agency countersigns, the Commission and NTIA will deem the coordination requirement satisfied for the AWS–3 licenses and Protection Zones listed in Table 1 of the agreement. Section 2, Table A of the template agreement calls for a description of license(s) to be subject to the agreement by State, Site, Call Sign, and Coordination Zone. Section 3 of the template agreement calls for the AWS–3 licensee (and the Federal agency) to provide Point-of-Contact information. Sections 2 and 4 of the template agreement contemplate AWS–3 licensee notifications to the Federal agency. Federal agencies will complete and countersign a template agreement within thirty (30) calendar days of receiving one signed by the AWS–3 licensee. Note that satisfaction of the coordination requirement through this template agreement does not eliminate the need for coordination with other types of systems, under the procedures established herein, to avoid harmful interference into Federal systems in the

Protection Zones described in Appendix B. Exchange of information during execution of these coordination agreements may be facilitated by use of the DoD Portal described in section IV above.

B. Federal Coordination With All Affected AWS–3 Licensees

49. Federal incumbents must successfully coordinate required, reasonable modifications of these Federal satellite earth stations in 1755–1780 MHz beyond their current authorizations or the addition of new earth station locations with all affected AWS–3 licensees. 47 CFR 2.106 footnote US91(b)(3). The modification or new station must be required, reasonable, and authorized by NTIA. The details of the coordination must be filed with NTIA and the Commission. *Id.* Prior NTIA authorization is required for any such modifications or new stations and NTIA will coordinate any such requests with the Commission so that the AWS–3 licensees affected by a proposed modification or new station can be determined on a case-by-case basis. For any affected AWS–3 licenses in the Commission's inventory at the time of the request, the Federal incumbent must successfully coordinate the request with the Commission. Appendices to this public notice are formatted tables, images, and a sample coordination agreement that are available online at: *www.ntia.doc.gov/category/aws-3-transition* and *https://apps.fcc.gov/edocs_public/attachmatch/DA-14-1023A1.pdf.*

Karl D. Nebbia,

Associate Administrator, Office of Spectrum Management, National Telecommunications and Information Administration.

Roger E. Sherman,

Chief, Wireless Telecommunications Bureau, Federal Communications Commission.

[FR Doc. 2014–21748 Filed 9–11–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 14–1230]

Notice of Suspension and Commencement of Proposed Debarment Proceedings; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') gives notice of Marvin M. Freeman's suspension from the schools and libraries universal service support mechanism (or ''E-Rate Program''). Additionally, the Bureau gives notice that debarment proceedings are commencing against him. Mr. Freeman, or any person who has an existing contract with or intends to contract with him to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support, may respond by filing an opposition request, supported by documentation to Joy Ragsdale, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street SW., Washington, DC 20554.

DATES: Opposition requests must be received by 30 days from the receipt of the suspension letter or September 12, 2014, whichever comes first. The Bureau will decide any opposition request for reversal or modification of suspension or debarment within 90 days of its receipt of such requests.

ADDRESSES: Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joy Ragsdale, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street SW., Washington, DC 20554. Joy Ragsdale may be contacted by phone at (202) 418–1697 or email at *Joy.Ragsdale@fcc.gov.* If Ms. Ragsdale is unavailable, you may contact Ms. Theresa Cavanaugh, Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by email at *Terry.Cavanaugh@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has suspension and debarment authority pursuant to 47 CFR 54.8 and 47 CFR 0.111(a)(14). Suspension will help to ensure that the party to be suspended cannot continue to benefit from the schools and libraries mechanism pending resolution of the debarment process. Attached is the suspension letter, DA 14–1230, which was mailed to Mr. Freeman and released on August 26, 2014. The complete text of the Notice of suspension and initiation of debarment proceedings is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via email *http://www.bcpiweb.com.*

Federal Communications Commission.

Theresa Z. Cavanaugh,

Chief, Investigations and Hearings Division, Enforcement Bureau.

August 26, 2014

DA 14–1230

SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Marvin Mitch Freeman, 1408 Northhill Street, Selma, CA 93662

Re: Notice of Suspension and Initiation of Debarment Proceeding File No. EB–IHD–14–00015659

Dear Mr. Freeman: The Federal Communications Commission (Commission) has received notice of your conviction of conspiracy to commit mail fraud in violation of 18 U.S.C 371, a conviction that arose out of activities associated with the federal schools and libraries universal service support mechanism (E-Rate program).[1] Consequently, pursuant to 47 CFR 54.8, this letter constitutes official notice of your suspension from the E-Rate program.[2] In addition, the Enforcement Bureau (Bureau) hereby notifies you that the Bureau will commence debarment proceedings against you.[3]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the [E-Rate program]'' from

[1] Any further reference in this letter to ''your conviction'' refers to your guilty plea and subsequent sentencing for conspiring to defraud the United States in *United States v. Freeman,* Criminal Docket No. 1:06–CR–00013–LJO–2, Plea Agreement at 3 (E.D. Cal. filed Oct. 22, 2010) (*Plea Agreement*).

[2] 47 CFR 54.8.

[3] *Id.* 0.111 (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings). The Commission adopted debarment rules for the E-Rate program in 2003. *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (*Second Report and Order*) (adopting § 54.521 to suspend and debar parties from the E-Rate program). In 2007 the Commission extended the debarment rules to apply to all federal universal service support mechanisms. *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight; Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link Up; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.,* Report and Order, 22 FCC Rcd 16372, App. C at 16410–12 (2007) (*Program Management Order*) (renumbering § 54.521 of the universal service debarment rules as § 54.8 and amending paragraphs (a)(1), (a)(5), (c), (d), (e)(2)(i), (e)(3), (e)(4), and (g)).

receiving the benefits associated with that program.[4] The statutory provisions and Commission rules relating to the E-Rate program are designed to ensure that all E-Rate funds are used for their intended purpose.[5] Sections 54.503 and 54.511 of the Commission's rules require that solicitations for E-Rate services be based on a fair and open competitive bidding process that is free from conflicts of interest.[6]

On November 1, 2010, you pled guilty to conspiring with others to defraud the E-Rate program. During the course of that conspiracy, you used your silk screening business, Twisted Head Design, as a shell company to circumvent the E-Rate program's competitive bidding rules.[7] Specifically, you conspired with Gregory Paul Styles, the Management Information Systems Director for the Chowchilla Elementary School District (CESD), to use Twisted Head Design to bid on CESD's E-Rate contracts.[8] Mr. Styles then selected Twisted Head Design's bids knowing that the company was unqualified to perform E-Rate work, performed the work himself or through his subcontractors, and billed USAC for the work.[9] As a result of your fraudulent scheme, USAC disbursed $787,950 to you, a substantial portion of which you forwarded to Mr. Styles, who deposited it in his bank account.[10]

On March 17, 2011, the United States District Court for the Eastern District of California sentenced you to 36 months of probation with conditions, including 200 hours of community service.[11] The court also ordered you to pay $40,000 in restitution to CESD and a $100 special assessment.[12]

Pursuant to § 54.8(b) of the Commission's rules,[13] upon your conviction for theft of E-Rate funds, the Bureau is required to suspend you from participating in any activities associated with or related to the E-Rate program, including receiving funds or discounted services through the E-Rate program, or consulting with, assisting, or advising applicants or service providers regarding the E-Rate program.[14] Your suspension becomes effective upon either your receipt of this letter or its publication in the **Federal Register**, whichever comes first.[15]

In accordance with the Commission's suspension and debarment rules, you may contest this suspension or the scope of this suspension by filing arguments, with any relevant documents, within thirty (30) calendar days of your receipt of this letter or its publication in the **Federal Register**, whichever comes first.[16] Such requests, however, will not ordinarily be granted.[17] The Bureau may reverse or limit the scope of a suspension only upon a finding of extraordinary circumstances.[18] The Bureau will decide any request to reverse or modify a suspension within ninety (90) calendar days of its receipt of such request.[19]

II. Initiation of Debarment Proceedings

In addition to requiring your immediate suspension from the E-Rate program, your conviction is cause for debarment as defined in § 54.8(c) of the Commission's rules.[20] Therefore, pursuant to § 54.8(b) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.[21]

As with the suspension process, you may contest the proposed debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within thirty (30) calendar days of receipt of this letter or its publication in the **Federal Register**, whichever comes first.[22] The Bureau, in the absence of extraordinary circumstances, will notify you of its decision to debar within ninety (90) calendar days of receiving any information you may have filed.[23] If the Bureau decides to debar you, its decision will become effective upon either your receipt of a debarment notice or publication of the decision in the **Federal Register**, whichever comes first.[24]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the E-Rate program for three years from the date of debarment.[25] The Bureau may set a longer debarment period or extend an existing debarment period if necessary to protect the public interest.[26]

Please direct any response, if sent by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 445 12th Street SW., Room TW–A325, Washington, DC 20554 and to the attention of Joy M. Ragsdale, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554 with a copy to Theresa Z. Cavanaugh, Division Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. All messenger or hand delivery filings must be submitted without envelopes.[27] If sent by commercial overnight mail (other than U.S. Postal Service (USPS) Express Mail and Priority Mail), the response must be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by USPS First Class, Express Mail, or Priority Mail, the response should be addressed to Joy Ragsdale, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW., Room 4–C330, Washington, DC 20554, with a copy to Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of your response via email to Joy M. Ragsdale,

[4] *Second Report and Order,* 118 FCC Rcd at 9225, para. 66; *Program Management Order,* 22 FCC Rcd at 16387, para. 32. The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.'' 47 CFR 54.8(a)(6).

[5] *NEC-Business Network Solutions, Inc.,* Notice of Debarment and Order Denying Waiver Petition, 21 FCC Rcd 7491, 7493, para. 7 (2006).

[6] 47 CFR 54.503, 54.511(a); *see Federal-State Joint Board on Universal Service,* CC Docket No. 96–45, Report and Order, 12 FCC Rcd 8776, 9078–80, paras. 480–81 (1997) (subsequent history omitted) (finding that without competitive bidding requirements, the applicant may not receive the most cost-effective services); *Lazo Technologies, Inc.,* Order on Reconsideration, 26 FCC Rcd 16661, 16664, para. 7 (2011) (explaining that a service provider may not be involved in the competitive bidding process other than as a bidder) (*Lazo Recon. Order*); *see also* USAC's Web site description of an Open and Fair Competitive Bidding Process, Step 2 *available at http://www.universalservice.org/sl/applicants/step02/competitive-bidding.aspx* (last visited June 9, 2014).

[7] *Plea Agreement* at 10–12; *United States v. Styles,* Criminal Docket No. 1:06–CR–00013–001, Indictment at 2 (E.D. Cal. filed Jan. 19, 2006) (*Indictment*); *see also* United States Attorney's Office, Eastern District of California, Press Releases, *Two Plead Guilty in Scheme to Defraud the Chowchilla Elementary School District,* Nov. 1, 2010, *available at http://www.fbi.gov/sacramento/press-releases/2010/sc110110.html.*

[8] *Plea Agreement* at 11; *see Indictment* at 6. The Bureau is also serving a notice of suspension and initiation of debarment proceedings on Mr. Styles. *See* Letter from Theresa Z. Cavanaugh, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Gregory Paul Styles, Notice of Suspension and Initiation of Debarment Proceedings, DA 14–1229 (Enf. Bur. Aug. 26, 2014).

[9] *Plea Agreement* at 11; *see Indictment* at 6.

[10] *Plea Agreement* at 12; *see Indictment* at 9, 12.

[11] *United States v. Freeman,* Criminal Docket No. 1:06–CR–00013–002, Judgment 1–4 (E.D. Cal. filed Mar. 17, 2011) (*Judgment*).

[12] *Judgment* at 3, 5. The court ordered Messrs. Styles and Freeman to pay this restitution joint and severally. *Id.* at 5.

[13] 47 CFR 54.8(a)(4); *see Second Report and Order,* 18 FCC Rcd at 9225–27, paras. 67–74.

[14] 47 CFR 54.8(a)(1), (d).

[15] *Second Report and Order,* 18 FCC Rcd at 9226, para. 69; 47 CFR 54.8(e)(1).

[16] 47 CFR 54.8(e)(4).

[17] *Id.*

[18] 47 CFR 54.8(f).

[19] *Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5), (f).

[20] ''Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural healthcare support mechanism, and the low-income support mechanism.'' 47 CFR 54.8(c). Associated activities ''include the receipt of funds or discounted services through [the federal universal service] support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding [the federal universal service] support mechanisms.'' *Id.* 54.8(a)(1).

[21] *Id.* 54.8(b).

[22] *Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(3).

[23] *Second Report and Order,* 18 FCC Rcd at 9226, para. 70; 47 CFR 54.8(e)(5).

[24] 47 CFR 54.8(e)(5). The Commission may reverse a debarment, or may limit the scope or period of debarment, upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. *Id.* 54.8(f).

[25] *Second Report and Order,* 18 FCC Rcd at 9225, para. 67; 47 CFR 54.8(d) and, (g).

[26] 47 CFR 54.8(g).

[27] *See* FCC *Public Notice,* DA 09–2529 for further filing instructions (rel. Dec. 3, 2009).

Joy.Ragsdale@fcc.gov, and to Theresa Z. Cavanaugh, *Terry.Cavanaugh@fcc.gov.*

If you have any questions, please contact Ms. Ragsdale via U.S. postal mail, email, or by telephone at (202) 418–1697. You may contact me at (202) 418–1553 or at the email address noted above if Ms. Ragsdale is unavailable.

Sincerely yours,
Theresa Z. Cavanaugh.
Chief.
Investigations and Hearings Division.
Enforcement Bureau.

cc: Johnnay Schrieber, Universal Service Administrative Company (via email);
Rashann Duvall, Universal Service Administrative Company (via email);
Mark J. McKeon, United States Attorney's Office, Eastern District of California (via email)

[FR Doc. 2014–21831 Filed 9–11–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission

DATE AND TIME: Tuesday, September 16, 2014 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Items To Be Discussed

Compliance matters pursuant to 2 U.S.C. 437g.

Matters concerning participation in civil actions or proceedings or arbitration.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

Person to Contact for Information: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2014–21860 Filed 9–10–14; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before November 12, 2014.

ADDRESSES: You may submit comments, identified by *FR 2070;* or *FR 2081a,b,c;* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Acting Clearance Officer—John Schmidt—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection 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.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Interagency Bank Merger Act Application.

Agency form number: FR 2070.
OMB control number: 7100–0171.
Frequency: On occasion.
Reporters: State member banks.
Estimated annual reporting hours: Nonaffiliate Transactions: 1,680 hours; Affiliate Transactions: 198 hours.
Estimated average hours per response: Nonaffiliate Transactions: 30 hours; Affiliate Transactions: 18 hours.
Number of respondents: Nonaffiliate Transactions: 56; Affiliate Transactions: 11.
General description of report: This information collection is required pursuant to section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) and is not given confidential treatment. However, applicants may request that parts of a submitted application be kept confidential. In such cases, the burden is on the applicant to justify the exemption by demonstrating that disclosure would cause substantial competitive harm or result in an unwarranted invasion of personal privacy or would otherwise qualify for an exemption under the Freedom of Information Act (5 U.S.C. 552). The confidentiality status of the information submitted will be judged on a case-by-case basis.
Abstract: The Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (the agencies) each use this application form to collect information for bank merger proposals that require prior approval under the Bank Merger Act. Prior approval is required for every merger transaction involving affiliated or nonaffiliated institutions and must be sought from the regulatory agency of the depository institution that would survive the proposed transaction. A merger transaction may include a merger, consolidation, assumption of deposit liabilities, or certain asset-transfers between or among two or more institutions. The Federal Reserve collects this information so that it may meet its statutory obligation of evaluating (with respect to every state member bank merger proposal) the competitive effects, the adequacy of the financial and managerial resources of the institutions involved, and the effect on the convenience and needs of the affected communities.

2. *Report title:* Interagency Notice of Change in Bank Control, Interagency Notice of Change in Director or Senior Executive Officer, and Interagency Biographical and Financial Report.
Agency form number: FR 2081a, FR 2081b, and FR 2081c.
OMB control number: 7100–0134.
Frequency: On occasion.
Reporters: Bank holding companies (BHCs), state member banks (SMBs), and certain of their officers and shareholders.
Estimated annual reporting hours: FR 2081a: 5,040 hours; FR 2081b: 618 hours; FR 2081c: 6,680 hours.
Estimated average hours per response: FR 2081a: 30 hours; FR 2081b: 2 hours; FR 2081c: 4 hours.
Number of respondents: FR 2081a: 168; FR 2081b: 309; FR 2081c: 1,670.
General description of report: The FR 2081a and FR 2081c are mandatory pursuant to section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)). The FR 2081b and FR 2081c are mandatory pursuant to section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act (12 U.S.C. 1831(i)). This information collection is not given confidential treatment. The organizations and individuals that use the forms may request that all or a portion of the submitted information be kept confidential. In such cases, the burden is on the filer to justify the exemption by demonstrating that disclosure would cause substantial competitive harm or result in an unwarranted invasion of personal privacy or would otherwise qualify for an exemption under the Freedom of Information Act (5 U.S.C. 552). The confidentiality status of the information submitted will be determined on a case-by-case basis.
Abstract: The information collected assists the Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (the agencies) in fulfilling their statutory responsibilities as supervisors. Each of these forms is used to collect information in connection with applications and notices filed prior to proposed changes in the ownership or management of banking organizations. The agencies use the information to evaluate the controlling owners, senior officers, and directors of the insured depository institutions subject to their oversight. The information collected in an Interagency Notice of Change in Bank Control (FR 2081a) submitted to the Federal Reserve is provided by persons proposing to make significant investments in a BHC or SMB. The information collected in the Interagency Notice of Change in Director or Senior Executive Officer (FR 2081b) is required under Section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and is submitted to the Federal Reserve (under certain circumstances) by a BHC or SMB making changes in its board of directors or senior executive officers. The Interagency Biographical and Financial Report (FR 2081c) is not a stand-alone reporting form; it is a companion reporting form to the FR 2081a and the FR 2018b (and to other Federal Reserve information collections) that is used to gather required information about the individuals involved in various applications and notices.

Board of Governors of the Federal Reserve System, September 9, 2014.
Robert deV. Frierson,
Secretary of the Board.
[FR Doc. 2014–21793 Filed 9–11–14; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 6, 2014.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *BankCap Equity Fund LLC, BankCap Partners GP L.P., and BankCap Partners Fund I, L.P., Indirectly Through BankCap Partners*

Opportunity Fund, L.P., all in Dallas, Texas; to acquire up to 24 percent of the voting shares of Silvergate Capital Corporation, and thereby indirectly acquire voting shares of Silvergate Bank, both in La Jolla, California.

Board of Governors of the Federal Reserve System, September 8, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–21713 Filed 9–11–14; 8:45 am]

BILLING CODE 6210–01–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 September 26, 2014.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Jeffrey F. Whitham Revocable Trust, Patricia M. Whitham and Tyler F. Whitham, as trustees and to become members of the Whitham Control Group,* all of Garden City, Kansas; to acquire voting shares of Whitcorp Financial Company, Leoti, Kansas, and thereby indirectly acquire voting shares of Western State Bank, Garden City, Kansas, and Frontier Bank, Lamar, Colorado.

Board of Governors of the Federal Reserve System, September 8, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–21715 Filed 9–11–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 6, 2014.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Cordorus Valley Bancorp, Inc.,* and CVLY, both in York, Pennsylvania; to acquire 100 percent of the voting shares of Madison Bancorp, Inc., and indirectly acquire voting shares of Madison Square Federal Savings Bank, both in Baltimore, Maryland, and thereby engage in operating a savings and loan holding association, pursuant to section 225.28(b)(4)(ii).

Board of Governors of the Federal Reserve System, September 8, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–21714 Filed 9–11–14; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0300; Docket No. 2014–0001; Sequence 5]

Information Collection; General Services Administration Acquisition Regulation; Implementation of Information Technology Security Provision

AGENCY: General Services Administration (GSA), General Services Administration Acquisition Regulation.

ACTION: Notice of request for comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding Implementation of Information Technology Security Provision.

DATES: Submit comments on or before November 12, 2014.

ADDRESSES: Submit comments identified by Information Collection 3090–0300, Implementation of Information Technology Security Provision, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0300. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0300, Implementation of Information Technology Security Provision''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0300, Implementation of Information Technology Security Provision'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: IC 3090–0300.

Instructions: Please submit comments only and cite Information Collection 3090–0300, Implementation of Information Technology Security Provision, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, Procurement Analyst, Office of Acquisition Policy, at (202) 357–9652 or via email at *dana.munson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Clause 552.237–71 requires contractors, within 30 days after contract award, to submit an IT Security Plan to the Contracting Officer and Contacting Officer's Representative that describes the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under the contract. The clause will also require that contractors submit written proof of IT security authorization six months after contract award, and verify that the IT Security Plan remains valid annually.

B. Annual Reporting Burden

Respondents: 103.

Responses per Respondent: 2.

Hours per Response: 5.

Total Burden Hours: 1,030.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the GSAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0300, Implementation of Information Technology Security Provision, in all correspondence.

Dated: September 4, 2014.

Jeffrey Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2014–21706 Filed 9–11–14; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Determination Concerning a Petition To Add a Class of Employees to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a determination concerning a petition to add a class of employees from the Joslyn Manufacturing Company in Fort Wayne, Indiana, to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 1090 Tusculum Avenue, MS C–47, Cincinnati, OH 45226–1938, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

SUPPLEMENTARY INFORMATION:

Authority: 42 U.S.C.7384q.

On August 22, 2014, the Secretary of HHS determined that the following class of employees does not meet the statutory criteria for addition to the SEC as authorized under EEOICPA:

All Atomic Weapons Employees who worked for Joslyn Manufacturing and Supply Co. at the covered facility in Fort Wayne, Indiana, from August 1, 1948, through December 31, 1952.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2014–21762 Filed 9–11–14; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–14–14AHH]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted 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. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies 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; (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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Assessing Education Agency Staff Perceptions of School Climate and Youth Access to Services—New—Division of Adolescent and School Health (DASH), National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

HIV infections remain high among young men who have sex with men (YMSM). The estimated number of new HIV infections increased between 2008 and 2010 both overall and among men who have sex with men (MSM) ages 13 to 24. Furthermore, sexual risk behaviors associated with HIV, other sexually transmitted disease (STD), and pregnancy often emerge in adolescence. For example, 2011 Youth Risk Behavior Surveillance System (YRBSS) data revealed 47.4% of U.S. high school students reported having had sex, and

among those who had sex in the previous three months, 39.8% reported having not used a condom during last sexual intercourse. In addition, 2001–2009 YRBSS data revealed high school students identifying as gay, lesbian, and bisexual and those reporting sexual contact with both males and females were more likely to engage in sexual risk-taking behaviors than heterosexual students.

Given the disproportionate risk for HIV among YMSM ages 13–24, it is important to find ways to reach the younger youth (i.e., ages 13–19) in this range to decrease sexual risk behaviors and increase health-promoting behaviors such as routine HIV testing. Schools provide one opportunity for this. Because schools enroll more than 22 million teens (ages 14–19) and often have existing health and social services infrastructure, schools and their staff members are well-positioned to connect youth to a wide range of needed services, including housing assistance, support groups, and sexual health services such as HIV testing. As a result, CDC's DASH has focused a number of HIV and STD prevention efforts on strategies that can be implemented in or centered around schools.

However, conducting HIV and STD prevention work (particularly work that is designed to specifically meet the needs of YMSM), can be challenging. School is not always a welcoming environment for lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth. Harassment, bullying, and verbal and physical assault are often reported, and such unsupportive environments and victimization among LGBT youth are associated with a variety of negative outcomes, including truancy, substance use, poor mental health, HIV and STD risk, and even suicide.

The Centers for Disease Control and Prevention (CDC) requests a 3-year OMB approval to conduct a new information collection entitled, ''Assessing Education Agency Staff Perceptions of School Climate and Youth Access to Services.'' The information collection uses two separate, but complementary, information collections to conduct assessment of HIV and STD prevention efforts that are taking place in three local education agencies (LEA) funded by the CDC's Division of Adolescent and School Health (DASH) under strategy 4 (School-Centered HIV/STD Prevention for Young Men Who Have Sex with Men (YMSM) of PS13–1308: *Promoting Adolescent Health through School-Based HIV/STD Prevention and School-Based Surveillance.*

This data collection will provide data and reports for the funded LEAs, and will allow the LEAs to identify areas of the program that are working well and other areas that will need additional improvement. In addition, the findings will allow CDC to determine the potential impact of currently recommended strategies and make changes to those recommendations if necessary.

The first information collection will involve collecting information from a total of up to 735 LEA employees in three LEAs through a Web-based instrument tailored to each LEA. The instrument will include items that ask education agency staff about professional development, referral practices, community linkages/partners, school climate for LGBTQ youth, school policies and practices, and staff comfort levels in helping address the health needs of YMSM.

The second information collection will be conducted in only one LEA (Broward County Public Schools) and is designed to provide an in-depth assessment of one LEA as a way to supplement the Web-based data collection with more detailed information. This information collection will involve in-person interviews with up to 44 LEA employees (2 district level employees, and up to 6 school level employees in each of 7 schools) to learn about six domains that can impact school climate: Policy, practice, programs, professional development, place, and pedagogy.

Both the Web-based instrument and in-person interviews will be administered in 2014 and 2016. These data collection points coincide with the initiation of project activities and the mid-way points of the PS13–1308 cooperative agreement. Although some staff may participate in the data collection in multiple years, this is not a longitudinal design and individual staff member responses will not be tracked across the years. No personally identifiable information will be collected.

All school staff members will receive informed consent forms prior to participation in the information collection. The consent form explains the study and also explains participants may choose not to complete the Web-based instrument or participate in the interviews with no penalty and no impact on their job or relationship with the LEA. Participation is completely voluntary.

For the Web-based instrument, the estimated burden per response ranges from 20–25 minutes. This variation in burden is due to the slight variability in skip patterns that may occur with certain responses and variations in the reading speed of respondents. The burden estimates presented here are based on the assumption of a 25-minute response time per response. The estimated annualized burden of this data collection is 204 hours for respondents. There are no costs to respondents other than their time.

For the Web-based instrument, the estimated burden per response ranges from 60–90 minutes, depending on whether the respondent is a district-level administrator, a school-level administrator, or another school staff member. The burden estimates presented here are based on the assumption of a 1-hour response time per district-level and school-level administrator response and a 1.5-hour response time per school staff member response. The estimated annualized burden of this data collection is 39 hours for respondents. There are no costs to respondents other than their time.

The two information collections combine for a total estimated annualized burden of 243 hours for respondents. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TO RESPONDENTS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
School staff	Web-based instrument for Broward County Public Schools.	163	1	25/60
School staff	Web-based instrument for Los Angeles Unified School District.	163	1	25/60

ESTIMATED ANNUALIZED BURDEN TO RESPONDENTS—Continued

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
School staff	Web-based instrument for San Francisco Unified School District.	163	1	25/60
District-level Administrators	School Climate Index Interview Guide for District-level Administrators.	1	1	1
School-level Administrators	School Climate Index Interview Guide for School-level Administrators.	9	1	1
School Staff	School Climate Index Interview Guide for School Staff	19	1	1.5

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–21754 Filed 9–11–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10525]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by October 14, 2014.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions:

OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–5806 or, *Email: OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Existing collection in use without an OMB control number; *Title of Information Collection:* Health Plan Monitoring System Level I and Level II Data Entry for the Program of All-Inclusive Care for the Elderly; *Use:* This information collection would require Program of All-Inclusive Care for the Elderly (PACE) organizations to enter Level I and Level II data into the CMS's Health Plan Monitoring System. The collected information will be used to develop a quality improvement strategy for PACE. *Form Number:* CMS–10525 (OMB control number: 0938—New); *Frequency:* Quarterly and occasionally; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 100; *Total Annual Responses:* 7,000; *Total Annual Hours:* 1,575. (For policy questions regarding this collection contact Tamika Gladney at 410–786–0648).

Dated: September 9, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–21799 Filed 9–11–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10291, CMS–10421 and CMS–10114]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by *November 12, 2014:*

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____ Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10291 State Collection and Reporting of Dental Provider and Benefit Package Information on the Insure Kids Now! Web site and Hotline

CMS–10421 Fee-for-Service Recovery Audit Prepayment Review Demonstration and Prior Authorization Demonstration

CMS–10114 National Provider Identifier (NPI) Application and Update Form and Supporting Regs in 45 CFR 142.408, 45 CFR 162.408, 45 CFR 162.406

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* State Collection and Reporting of Dental Provider and Benefit Package Information on the Insure Kids Now! Web site and Hotline; *Use:* On the Insure Kids Now (IKN) Web site, the Secretary is required to post a current and accurate list of dentists and providers that provide dental services to children enrolled in the state plan (or waiver) under Medicaid or the state child health plan (or waiver) under CHIP. States collect the information pertaining to their Medicaid and CHIP dental benefits. *Form Number:* CMS–10291 (OMB control number: 0938–1065); *Frequency:* Yearly and quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 255; *Total Annual Hours:* 10,838. (For policy questions regarding this collection contact Laurie Norris at 410–786–6543).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Fee-for-Service Recovery Audit Prepayment Review Demonstration and Prior Authorization Demonstration; *Use:* On July 23, 2012, the Office of Management and Budget approved the collections required for two demonstrations of prepayment review and prior authorization. The first demonstration allows Medicare Recovery Auditors to review claims on a pre-payment basis in certain States. The second demonstration established a prior authorization program for Power Mobility Device claims in certain States.

For the Recovery Audit Prepayment Review Demonstration, CMS and its agents request additional documentation, including medical records, to support submitted claims. As discussed in more detail in Chapter 3 of the Program Integrity Manual, additional documentation includes any medical documentation, beyond what is included on the face of the claim that supports the item or service that is billed. For Medicare to consider coverage and payment for any item or service, the information submitted by the provider or supplier (e.g., claims) must be supported by the documentation in the patient's medical records. When conducting complex medical review, the contractor specifies documentation they require in accordance with Medicare's rules and policies. In addition, providers and suppliers may supply additional documentation not explicitly listed by the contractor. This supporting information may be requested by CMS and its agents on a routine basis in instances where diagnoses on a claim do not clearly indicate medical necessity, or if there is a suspicion of fraud.

For the Prior Authorization of Power Mobility Devices (PMDs) Demonstration, we are piloting prior authorization for PMDs. Prior authorization will allow the applicable documentation that supports a claim to be submitted before the item is delivered. For prior authorization, relevant documentation for review is submitted before the item is delivered or the service is rendered. CMS will conduct this demonstration in

California, Florida, Illinois, Michigan, New York, North Carolina, Texas, Pennsylvania, Ohio, Louisiana, Missouri, Maryland, New Jersey, Indiana, Kentucky, Georgia, Tennessee, Washington, and Arizona based on beneficiary address as reported to the Social Security Administration and recorded in the Common Working File (CWF). For the demonstration, a prior authorization request can be completed by the (ordering) physician or treating practitioner and submitted to the appropriate DME MAC for an initial decision. The supplier may also submit the request on behalf of the physician or treating practitioner. The physician, treating practitioner or supplier who submits the request on behalf of the physician or treating practitioner, is referred to as the ''submitter.'' Under this demonstration, the submitter will submit to the DME MAC a request for prior authorization and all relevant documentation to support Medicare coverage of the PMD item.

Form Number: CMS–10421 (OMB control number: 0938–1169); *Frequency:* Occasionally; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 333,750; *Total Annual Responses:* 333,750; *Total Annual Hours:* 170,060. (For policy questions regarding this collection contact Daniel Schwartz at 410–786–4197.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* National Provider Identifier (NPI) Application and Update Form and Supporting Regulations in 45 CFR 142.408, 45 CFR 162.406, 45 CFR 162.408; *Use:* The National Provider Identifier (NPI) Application and Update Form is used by health care providers to apply for NPIs and furnish updates to the information they supplied on their initial applications. The form is also used to deactivate their NPIs if necessary. The NPI Application/Update form has been revised to provide additional guidance on how to accurately complete the form. The NPI Application/Update form has been revised to provide additional guidance on how to accurately complete the form. This collection includes clarification on information that is required on applications/changes. Minor changes on the application/update form include adding a 'Subpart' check box in the Other Name section and a revision within the PRA Disclosure Statement. This collection also includes changes to the instructions. *Form Number:* CMS–10114 (OMB control number: 0938–0931); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit, not-for-profit institutions, and Federal government; *Number of Respondents:* 608,880; *Total Annual Responses:* 608,880; *Total Annual Hours:* 112,660. (For policy questions regarding this collection contact Leslie Jones at 410–786–6599.)

Dated: September 9, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–21798 Filed 9–11–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0110]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Prescription Drug Advertisements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Prescription Drug Advertisements'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On June 12, 2014, the Agency submitted a proposed collection of information entitled ''Prescription Drug Advertisements'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0686. The approval expires on August 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: September 8, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21727 Filed 9–11–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1219]

Agency Information Collection Activities; Proposed Collection; Comment Request; Survey of Health Care Practitioners for Device Labeling Format and Content

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed information collection ''Survey of Health Care Practitioners for Device Labeling Format and Content.''

DATES: Submit either electronic or written comments on the collection of information by November 12, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each

proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Survey of Health Care Practitioners for Device Labeling Format and Content—21 CFR Part 801 (OMB Control Number 0910–NEW)

The purpose of this study is to compare existing device labeling from approximately six different types of medical devices with a standard content and format of the same labeling that FDA researchers will develop using the existing labeling as their source of the information.

Building upon the research methodology and success of the approach FDA used to evaluate drug labeling, we propose to measure the usability and usefulness of a draft standard content and format of device labeling against existing manufacturer labeling of the same device. This will support our research that has already been done to assess whether health care practitioners (HCPs) find the format and content of device labeling to be clear, understandable, useful, and user friendly (OMB control number 0910–0715). Findings will provide evidence to inform FDA's planned regulatory approach to standardizing medical device labeling across the United States.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondent	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Capital costs
HCPs participating at a hospital	8	1	8	2	16	
HCPs participating at FDA	30	1	30	4	120	$600
Total					136	600

[1] There are no operating and maintenance costs associated with this collection of information.

We will conduct the studies at three different sites including two area hospitals using their devices, existing labeling, and HCPs. We expect that the maximum time for testing will be 2 hours. Given a sample of 6 devices with 2 different labeling types, there will be 12 different labeling types to be tested. We plan to have eight people test each type of the labeling.

We will also conduct the studies on FDA's campus using medical devices received from medical device industry representatives through a material transfer agreement. To account for travel time and cost, we have included 2 additional hours and $20 per respondent in the burden estimate for HCPs participating at FDA.

Dated: September 5, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21725 Filed 9–11–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1478]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Providing Waiver-Related Materials in Accordance With Draft Guidance for Industry on Providing Postmarket Periodic Safety Reports in the International Conference on Harmonisation E2C(R2) Format

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled Providing Waiver-Related Materials in Accordance with Draft Guidance for Industry on Providing ''Postmarket Periodic Safety Reports in the International Conference on Harmonisation E2C(R2) Format'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On June 19, 2014, the Agency submitted a proposed collection of information entitled ''Providing Waiver-Related Materials in Accordance with Draft Guidance for Industry on Providing Postmarket Periodic Safety Reports in the International Conference on Harmonisation E2C(R2) Format'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0771. The approval expires on August 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain*.

Dated: September 8, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21726 Filed 9–11–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0485]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Electronic Submission of Allegations of Regulatory Misconduct Associated With Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Electronic Submission of Allegations of Regulatory Misconduct Associated with Medical Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On May 27, 2014, the Agency submitted a proposed collection of information entitled ''Electronic Submission of Allegations of Regulatory Misconduct Associated with Medical Devices'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0769. The approval expires on August 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: September 5, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21769 Filed 9–11–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1422]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Eye Tracking Study of Direct-to-Consumer Prescription Drug Advertisement Viewing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Eye Tracking Study of Direct-to-Consumer Prescription Drug Advertisement Viewing'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On June 30, 2014, the Agency submitted a proposed collection of information entitled ''Eye Tracking Study of Direct-to-Consumer Prescription Drug Advertisement Viewing'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0772. The approval expires on August 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: September 8, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21728 Filed 9–11–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0199]

MK Laboratories, Inc., et al.; Withdrawal of Approval of 3 Abbreviated New Drug Applications for Propoxyphene Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three abbreviated new drug applications (ANDAs) for products containing propoxyphene. The basis for the withdrawals is that the products are no longer shown to be safe because propoxyphene puts patients at risk of potentially serious and even fatal heart rhythm abnormalities. The holders of these ANDAs have waived their opportunity for a hearing.

DATES: Effective September 12, 2014.

FOR FURTHER INFORMATION CONTACT: David Joy, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 51, Rm. 6254, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: On November 18, 2010, after receiving clinical data and other information showing that propoxyphene puts patients at risk of potentially serious and even fatal heart rhythm abnormalities, FDA asked manufacturers of then marketed branded and generic propoxyphene drug products to voluntarily withdraw the products from the U.S. market. In a notice published in the **Federal Register** of March 10, 2014 (79 FR 13308), FDA withdrew approval of 8 new drug applications (NDAs) and 46 ANDAs for propoxyphene drug products from multiple sources whose application holders agreed in writing to waive their opportunity for a hearing and permit FDA to withdraw approval of the applications. In a separate notice published in the **Federal Register** of March 10, 2014 (79 FR 13310), FDA's Center for Drug Evaluation and Research (CDER) notified the holders of 3 other approved ANDAs for propoxyphene drug products of their opportunity to request a hearing on CDER's proposal to issue an order, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(e)), withdrawing approval of 3 ANDAs for propoxyphene drug products. The following products, all of which FDA

believes were discontinued prior to November 2010, were listed in the notice.

TABLE 1—PROPOXYPHENE DRUG PRODUCT APPLICATIONS FOR WHICH FDA PROPOSED TO WITHDRAW APPROVAL

Application No.	Drug	Applicant or holder
ANDA 083544	Kesso-Gesic (propoxyphene hydrochloride (HCl)) Capsules, 65 milligrams (mg).	MK Laboratories Inc., 424 Grasmere Ave., Fairfield, CT 06430.
ANDA 084551	Propoxyphene HCl Capsules, 65 mg	Whiteworth Towne Paulsen Inc.
ANDA 084553	Compound 65 (aspirin, caffeine, and propoxyphene HCl) Capsules, 389 mg/32.4 mg/65 mg.	Alra Labs, 3850 Clearview Ct., Gurnee, IL 60031.

In its March 10, 2014, notice of opportunity for a hearing, CDER provided these ANDA holders an opportunity to request a hearing to show why approval of the ANDAs should not be withdrawn. No timely request for a hearing on this matter was received following publication of the notice in the **Federal Register**.

Therefore, under section 505(e) of the FD&C Act and under authority delegated to the Director of CDER by the Commissioner of Food and Drugs, approval of the applications listed in table 1 and all amendments and supplements thereto is withdrawn (see **DATES**). Introduction or delivery for introduction of these products into interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 331(d))).

Dated: September 5, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21729 Filed 9–11–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

Joint Meeting of the Psychopharmacologic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Joint Meeting of the Psychopharmacologic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee. This meeting was announced in the **Federal Register** of April 25, 2014 (79 FR 22995). The amendment is being made to reflect a change in the *Agenda* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *PDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 2014, FDA announced that a meeting of the Joint Meeting of the Psychopharmacologic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee would be held on October 16, 2014. On page 22996, in the first column, the *Agenda* portion of the document is changed to read as follows:

Agenda: The committees will discuss safety data from observational studies and a meta-analysis of randomized controlled clinical trials that have been conducted since the original signal of serious neuropsychiatric adverse events with CHANTIX (varenicline tartrate tablets, NDA 21928, Pfizer, Inc.) emerged. The committees will also discuss whether any action needs to be taken with regard to how this risk is described in product labeling.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: September 9, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–21780 Filed 9–11–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Food and Drug Administration (FDA) and the National Cancer Institute (NCI) Health Communication Survey (FDA–NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 8, 2014, Vol. 79, No. 89, page 26439 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments To OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Bradford W. Hesse, Ph.D., Health Communication and Informatics Research Branch, 9609 Medical Center

Drive, MSC 9761, Room 3E610, Rockville, MD 20850 or call non-toll free number 240–276–6721 or Email your request, including your address, to *hesseb@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Food and Drug Administration (FDA) and the National Cancer Institute (NCI) Health Communication Survey (FDA–NCI), 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: This partnership between NCI and FDA will include assessing the public's knowledge of medical devices, communications related to product recalls, nutritional supplement labeling, and topics to inform FDA's regulatory authority over tobacco, such as risk perceptions about new tobacco products and labels. This NCI–FDA survey will couple knowledge-related questions with inquiries into the communication channels through which understanding is being obtained, and assessment of FDA-regulated material. This survey will extend the information collected and priorities from the Health Information National Trends Survey (HINTS) which has been to provide a comprehensive assessment of the American public's current access to, and use of, information about cancer across the cancer care continuum from cancer prevention, early detection, diagnosis, treatment, and survivorship.

OMB approval is requested for 1 year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,159.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Individuals	4,318	1	30/60	2,159

Dated: September 8, 2014.

Karla Bailey,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–21783 Filed 9–11–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Cancer Epidemiology Descriptive Cohort Database (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 18, 2014, Vol. 79, page 34766 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments To OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project contact: Daniela Seminara, Senior Scientist and Cohort and Consortia Coordination Team Lead, Epidemiology and Genomics Research Program (EGRP), Division of Cancer Control and Population Sciences (DCCPS), 9609 Medical Center Drive, Rockville, Md. 20892 or call non-toll-free number 240–276–6748 or email your request, including your address to: *seminard@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Cancer Epidemiology Descriptive Cohort Database, 0925—New, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The NCI Epidemiology and Genomics Research Program (EGRP) supports large-scale collaborations across numerous cancer epidemiology cohorts. The collaborative approach to date has been lacking in easily accessible, centralized, and searchable information. To address the need for better collaborative research and increased transparency, EGRP will develop a Cancer Epidemiology Descriptive Cohort Database (CEDCD) accessible through a public Web site. The information collected from the current survey will be used to populate the CEDCD. This public Web site will allow investigators to know what data and specimens exist among other cohorts. Respondents will be cohort Principal Investigators. The data collection forms will be sent to participating cohort PIs annually to update any information that has changed so that the CEDCD Web site will remain current. No cohort participant-level data is being collected from any of the cohorts.

The information to be collected will be aggregate descriptive information and protocols. Though the CEDCD has a biospecimen component (similar to the Specimen Resource Locator), the CEDCD is not a biospecimen locator database. It is a database focusing exclusively on descriptive data pertaining to large, prospective epidemiology cohorts.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 550.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Individual: Principal Investigator New Cohort.	Approval Form	100	1	30/60	50
	Biospecimen and Cancer Count Information Spreadsheet.	100	1	60/60	100
	Cancer Epidemiology Descriptive Cohort Database Data Collection Form.	100	1	90/60	150
Individual: Principal Investigator Established Cohort.	Biospecimen and Cancer Count Information Spreadsheet.	200	1	30/60	100
	Cancer Epidemiology Descriptive Cohort Database Data Collection Form.	200	1	45/60	150

Dated: September 8, 2014.

Karla Bailey,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–21785 Filed 9–11–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 Alcohol Abuse and Alcoholism Initial Review Group; Clinical, Treatment and Health Sciences Research Review Subcommittee.

Date: October 15, 2014.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant proposals.

Place: NIAAA, NIH, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20852.

Contact Person: Katrina L. Foster, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane; Room 2019, Rockville, MD 20852, (301) 443–4032, *katrina@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Biomedical Research Review Subcommittee.

Date: October 21, 2014.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant proposals.

Place: NIAAA, NIH, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20852.

Contact Person: Philippe Marmillot, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane; Room 2017, Rockville, MD 20852, (301) 443–2861, *marmillotp@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Epidemiology, Prevention and Behavior Research Review Subcommittee.

Date: October 22, 2014.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant proposals.

Place: NIAAA, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20852.

Contact Person: Katrina L. Foster, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane; Room 2019, Rockville, MD 20852, (301) 443–4032, *katrina@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience Review Subcommittee.

Date: November 4–5, 2014.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant proposals.

Place: NIAAA, NIH, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20852.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, NIH, 5635 Fishers Lane; Room 2081, Rockville, MD 20852, (301) 443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 92.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Supports Awards, National Institutes of Health, HHS)

Dated: September 8, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21721 Filed 9–11–14; 8:45 am]

BILLING CODE 4140–01–P

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; Affordable Hearing.

Date: October 15, 2014.

Time: 11 a.m. to 1:30 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: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; VSL Fellowships Review.

Date: October 15, 2014.

Time: 12:30 p.m. to 4:40 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: Communication Disorders Review Committee.

Date: October 16–17, 2014.

Time: 8 a.m. to 5 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: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–435–1425, *yangshi@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; HB Fellowships Review.

Date: October 21, 2014.

Time: 11 a.m. to 3 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: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; T32 Training Grant Review.

Date: October 22, 2014.

Time: 1 p.m. to 4 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: Eliane Lazar-Wesley, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Boulevard, Room 8339, MSC 9670, Bethesda, MD 20892–8401, 301–496–8683, *el6r@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: September 8, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21720 Filed 9–11–14; 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: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: October 6–7, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: October 6–7, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Social Psychology, Personality and Interpersonal Processes.

Date: October 7, 2014.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Social Processes in Schizophrenia.

Date: October 7, 2014.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.

Date: October 9–10, 2014.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Richard A. Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: October 9–10, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites DC Convention Center, 900 10th Street NW., Washington, DC.

Contact Person: Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033, *gaianonr@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.

Date: October 9, 2014.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave. NW., Washington, DC 20036.

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.
Date: October 9–10, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
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: Brain Disorders and Clinical Neuroscience Integrated Review Group; Chronic Dysfunction and Integrative Neurodegeneration Study Section.
Date: October 9–10, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Long Beach and Executive Center, 701 West Ocean Boulevard, Long Beach, CA 90831.
Contact Person: Alexei Kondratyev, Ph.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kondratyevad@csr.nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.
Date: October 9–10, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard Long Beach, 3841 N. Lakewood Blvd., Long Beach, CA 90808.
Contact Person: Dennis Hlasta, Ph.D, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, MSC 7892, Bethesda, MD 20892, 301–435–1047, *dennis.hlasta@nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Nursing and Related Clinical Sciences Study Section.
Date: October 9–10, 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: Priscah Mujuru, RN, DRPH, COHNS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *mjurup@mail.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.
Date: October 9–10, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.
Contact Person: Bahiru Gametchu, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–408–9329, *gametchb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Macromolecular Structure and Function: Quorum.
Date: October 9, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL 60611.
Contact Person: James W. Mack, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Molecular and Cellular Hematology Study Section.
Date: October 9–10, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: DoubleTree By Hilton Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6183, MSC 7804, Bethesda, MD 20892, 301–495–1213, *espinozala@mail.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Risk, Prevention and Intervention for Addictions Study Section.
Date: October 9–10, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.
Contact Person: Miriam Mintzer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3108, Bethesda, MD 20892, (301) 523–0646, *mintzermz@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study, Section.
Date: October 9–10, 2014.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.
Contact Person: Julius Cinque, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, *cinquej@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.
Date: October 9, 2014.
Time: 8:30 a.m. to 7:00 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: Ronald Adkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301–435–4511, *ronald.adkins@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk Prevention and Intervention for Addictions.
Date: October 10, 2014.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.
Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 5, 2014.

Anna Snouffer

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21722 Filed 9–11–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychosocial Risk and Disease Prevention.

Date: September 29, 2014.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurogenesis and Cell Fate.
Date: October 8, 2014.
Time: 6 p.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Alexandria, 1900 Diagonal Road, Alexandria, VA 22314.
Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Clinical and Integrative Diabetes and Obesity Study Section.
Date: October 9–10, 2014.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.
Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, 301–408–9901, *sheardn@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Neurological, Aging and Musculoskeletal Epidemiology Study Section.
Date: October 9–10, 2014.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Torrance Marriott South Bay, 3635 Fashion Way, Torrance, CA 90503.
Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiovascular Differentiation and Development Study Section.
Date: October 10, 2014.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.
Contact Person: Sara Ahlgren, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4136, Bethesda, MD 20817–7814, 301–435–0904, *sara.ahlgren@nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry B Study Section.
Date: October 13–14, 2014.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington DC 20037.
Contact Person: Kathryn M. Koeller, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–2681, *koellerk@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 8, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21719 Filed 9–11–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel; Effective Palliative/End of Life Care Interventions.
Date: October 8, 2014.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov.*

Name of Committee: National Institute of Nursing Research Initial Review Group.
Date: October 14–15, 2014.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Institutional Research Training Grants.
Date: October 15, 2014.
Time: 12 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Weiqun Li, MD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Training and Career Development.
Date: October 21, 2014.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, Suite 703, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Yujing Liu, Ph.D., MD, Chief, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 451–5152, *yujing_liu@nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Chronic Wounds: Advancing the Science from Prevention to Healing.
Date: October 23, 2014.
Time: 7:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Mario Rinaudo, MD, Scientific Review Officer, Office of Review, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health HHS)

Dated: September 8, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–21718 Filed 9–11–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5756–N–35]

60-Day Notice of Proposed Information Collection: Capital Needs Assessments-CNA e Tool

AGENCY: Office of the Assistant Secretary for Housing, 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:* November 12, 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: Harry Messner, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Harry Messner at *harry.messner@hud.gov* or telephone (202) 402–2626. 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. In addition, a copy of the proposed Capital Needs Assessment (Excel spreadsheet assessment tool) can be found at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/CNA*

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: Capital Needs Assessment—CNA e Tool.

OMB Approval Number: 2502–0505.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the Need for the Information and Proposed Use: A Capital Needs Assessment is a detailed review of a property's emergent and expected capital expenses over future years, a span of time known as the ''estimate period.'' It is needed in order to appropriately value a property to determine if the property is financially sustainable and to plan funding of an escrow account for payment of capital repair and replacement needs during the estimate period. It is used by mortgage lenders and property owners, developers and HUD for valuation, underwriting and asset management purposes.

Respondents (i.e. affected public): Capital Needs Assessments will be submitted by property owners, buyers and mortgage lenders for multifamily housing when applying for mortgage loans or loan guarantees from the United States Department of Agriculture, loan guarantees from HUD, assisted housing providers receiving Section 8 subsidy or those who received HUD assistance in the past.

Estimated Annual Number of Respondents: 3,792.

Estimated Annual Number of Responses: 3,792.

Frequency of Response: 1.

Average Hours per Response: 40.

Total Estimated Burdens: 151,680.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 5, 2014.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2014–21843 Filed 9–11–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5756–N–36]

60-Day Notice of Proposed Information Collection: Construction Complaint/Request for Financial Assistance

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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:* November 12, 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: Patricia McClung, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Patricia McClung at *Patricia.J.McClung@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. McClung.

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: Construction Complaint/Request for Financial Assistance.

OMB Approval Number: 2502–0047.

Type of Request: Extension.

Form Number: HUD 92556.

Description of the need for the information and proposed use: The information collection is submitted by homeowners and is used by HUD to identify the items of complaint in order to help the homeowner obtain correction.

Respondents: Application for benefits.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 10.

Frequency of Response: 1 per mortgagor.

Average Hours per Response: .5.

Total Estimated Burdens: 5.

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: September 5, 2014.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2014–21839 Filed 9–11–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–37]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)-443–6672 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of

publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; *COE:* Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; *Commerce:* Ms. Linda Steward, Department of Commerce, Office of Real Estate, 1401 Constitution Ave. NW., Room 1036, Washington, DC 20230, (202) 482–1770; *Energy:* Mr. David Steinau, Department of Energy, Office of Property Management, 1000 Independence Ave. SW., Washington, DC 20585 (202) 287–1503; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 3960 N. 56th Ave., #104, Hollywood, FL 33021; (443) 223–4639; (These are not toll-free numbers).

Dated: September 4, 2014.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 09/12/2014

Suitable/Available Properties

Building

Illinois

22 Buildings
Fermi National Accelerator Lab
Batavia IL 60510
Landholding Agency: Energy
Property Number: 41201430004
Status: Excess
Directions: T085, T137, T138, T139, T142, T144, T145, T146, T147, T149, T151, T163, T164, T165, T166, T167, T168, T169, T170, T171, T175, T177
Comments: off-site removal only; sq. varies; good to moderate conditions; trailers; secured area; contact Energy for more information on a specific property & accessibility requirements.

Iowa

3 Buildings; CENWK-of-RA
Rathbun Lake, Rolling Cove Bldg.
Junction of 160the Ave, & 435 St.
Mystic IA 52544
Landholding Agency: COE
Property Number: 31201430006
Status: Underutilized
Directions: #70003 Property ID #29388; #7004 Property ID #29389: #70005 Property ID #29390
Comments: off-site removal only no future agency need; sq. ft. varies; deteriorations conditions; contact COE for more information on a specific property.

Nevada

Railroad Building Main Bldg.
(FRPP RPUID R15100300700B)
400 Railroad Ave.
Boulder City NV 89005
Landholding Agency: Interior
Property Number: 61201430001
Status: Unutilized
Directions: 14,428 sq.; storage/office; friable asbestos; $500K-$600K for remediation
Comments: off-site removal only; no future agency need; relocation may be difficult due to site/type; contact Interior for more information.

Oregon

XX334 GB Grizzly Communication
Bldg. 1560.005181 076630 00
Agness OR 97406
Landholding Agency: Agriculture
Property Number: 15201430020
Status: Excess
Directions: 25 sq.; shed; 39+ yrs.-old; poor condition
Comments: off-site removal only; restrictive removal due to constraints surrounding land/vegetation.

US Moorings
8010 Northwest Saints Helens Road
Portland OR 97210
Landholding Agency: COE
Property Number: 31201430008
Status: Underutilized
Directions: US Government-Storage Building (North of Machine Shop)
Comments: off-site removal only; no future agency; 10x60 sq., removal may be difficult; poor conditions; storage space; contamination; secured area; contact COE for more information.

Texas

Ft Hancock Border Patrol Station
235 Knox Avenue
Ft. Hancock TX 79839
Landholding Agency: GSA
Property Number: 54201430010
Status: Surplus
GSA Number: 7–X–TX–1157–AA
Directions: Disposal Agency; GSA; Land holding Agency; US Customs and Border Protection
Comments: 3,022 sq. ft.; office, storage, detention; 49+ years old; fair to moderate condition; contact GSA for more information.

Ft Hancock Border Patrol Station
250 Kbix Avenue
Ft Hancock TX 79839
Landholding Agency: GSA
Property Number: 54201430012
Status: Surplus
GSA Number: 7–X–TX–1157–AB
Directions: Disposal Agency; GSA; land holding agency; US Customs and Border Protection.
Comments: 888 sq. ft.; residential; 42+ years old; fair to moderate condition; contact GSA for more information.

Suitable/Available Properties

Land

Alabama

1.74 acres
1707 Capshaw Road
Madison AL 35757
Landholding Agency: GSA
Property Number: 54201430011
Status: Excess
GSA Number: 4–U–AL–0813AA
Directions: Disposal agency; GSA; land holding agency; FAA
Comments: surrounding land use residential improvements; gravel driving; contact GSA for more information.

Unsuitable Properties

Building

California

Building 182 & 212
LLNL Site 200, on the SW guardant of the site off of Westgate Dr./First St.
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201430005
Status: Excess
Comments: public access denied and no alternative method to gain access w/out compromising national security
Reasons: Secured Area

Building 221
LLNL Site 200, on the SW guardant of the site off of Second St.
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201430006
Status: Excess
Comments: public access denied and no alternative method to gain access w/out compromising national security
Reasons: Secured Area

9 Trailers
LLNL Site 200
Livermore CA 94550
Landholding Agency: Energy
Property Number: 41201430007
Status: Excess
Directions: 1601; 1884; 1885; 1927; 2684; 4385; 4926; 5425; 2728
Comments: public access denied and no alternative method to gain access w/out compromising national security
Reasons: Secured Area

Colorado

8 Buildings; East Portal Site
Gilpin County Road
Nederland CO
Landholding Agency: Agriculture
Property Number: 15201430019
Status: Excess
Directions: 176; 177; 178; 179; 180; 181; 182; 183
Comments: documented deficiencies; structurally unsound; extreme deterioration; clear threat of physical safety.
Reasons: Extensive deterioration

Virginia

Old Generator—Building 17
Thunder Road
Sterling VA
Landholding Agency: Commerce

Property Number: 27201430002
Status: Unutilized
Comments: property located within airport clear zone for Dulles International Airport.
Reasons: Within airport runway clear zone

Old Weather Forecast Office
Weather Service Road
Sterling VA
Landholding Agency: Commerce
Property Number: 27201430003
Status: Unutilized
Comments: located within airport clear zone for Dulles International Airport.
Reasons: Within airport runway clear zone

Old Storage Building
Weather Service Road
Sterling VA
Landholding Agency: Commerce
Property Number: 27201430004
Status: Unutilized
Comments: property located within airport clear zone for Dulles International Airport.
Reasons: Within airport runway clear zone

Old Upper Air Inflation Bldg.
Thunder Road
Sterling VA
Landholding Agency: Commerce
Property Number: 27201430005
Status: Unutilized
Comments: property located within airport clear zone; within protection zone for Dulles International Airport.
Reasons: Within airport runway clear zone

Old SFSC Observation Bldg.
Weather Service Rd.
Sterling VA
Landholding Agency: Commerce
Property Number: 27201430006
Status: Unutilized
Comments: located w/in airport clear zone for Dallas International Airport
Reasons: Within airport runway clear zone

Old Sterling Field Support
Center Storage Bldg. #15
Thunder Rd.
Sterling VA
Landholding Agency: Commerce
Property Number: 27201430007
Status: Unutilized
Comments: located w/in airport clear zone for Dallas International Airport
Reasons: Within airport runway clear zone

Land

Delaware

Bellevue Confined Disposal Are
1380 East 4th Street
Wilmington DE 19802
Landholding Agency: COE
Property Number: 31201430007
Status: Excess
Comments: public access denied & no alternative without compromising National Security.
Reasons: Secured Area

[FR Doc. 2014–21430 Filed 9–11–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2014–N193; FXMB123109WEBB0–145–FF09M25100]

Proposed Information Collection; North American Woodcock Singing Ground Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service, Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on April 30, 2015. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: To ensure that we are able to consider your comments on this IC, we must receive them by November 12, 2014.

ADDRESSES: Send your comments on the IC to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or *hope_grey@fws.gov* (email). Please include ''1018–0019'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Migratory Bird Treaty Act (16 U.S.C. 703–712) and Fish and Wildlife Act of 1956 (16 U.S.C. 742a–754j–2) designate the Department of the Interior as the primary agency responsible for:

- Management of migratory bird populations frequenting the United States, and
- Setting hunting regulations that allow for the well-being of migratory bird populations.

These responsibilities dictate that we gather accurate data on various characteristics of migratory bird populations.

The North American Woodcock Singing Ground Survey is an essential part of the migratory bird management program. State, Federal, Provincial, local, and tribal conservation agencies conduct the survey annually to provide the data necessary to determine the population status of the woodcock. In addition, the information is vital in assessing the relative changes in the geographic distribution of the woodcock. We use the information primarily to develop recommendations for hunting regulations. Without information on the population's status, we might promulgate hunting regulations that:

- Are not sufficiently restrictive, which could cause harm to the woodcock population, or
- Are too restrictive, which would unduly restrict recreational opportunities afforded by woodcock hunting.

The Service, State conservation agencies, university associates, and other interested parties use the data for various research and management projects.

II. Data

OMB Control Number: 1018–0019.

Title: North American Woodcock Singing Ground Survey.

Service Form Number(s): 3–156.

Type of Request: Extension of currently approved collection.

Description of Respondents: State, Provincial, local, and tribal employees.

Frequency of Collection: Annually.

Respondent's Obligation: Voluntary.

Estimated Number of Respondents: 759.

Estimated Annual Number of Responses: 759.

Estimated Total Annual Burden Hours: 1,354 hours. We estimate that 662 persons will enter data electronically, with an average reporting burden of 1.8 hours per respondent. For all other respondents, we estimate the reporting burden to be 1.67 hours per respondent.

Estimated Annual Nonhour Burden Cost: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 9, 2014.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2014–21797 Filed 9–11–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2014–N179; FXES11130100000–145–FF01E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application for a recovery permit to conduct activities with the purpose of enhancing the survival of endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by October 14, 2014.

ADDRESSES: Program Manager for Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address, or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following application. Please refer to the permit number for the application when submitting comments.

Documents and other information submitted with this application is available for review by request from the Program Manager for Restoration and Endangered Species Classification at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–739923

Applicant: Hawaii Volcanoes National Park, Hawaii National Park, Hawaii

The applicant requests a permit renewal to take (capture, measure, mark, attach radio/satellite transmitters, and release adults; locate, monitor, screen, and excavate nests; relocate eggs; release live hatchlings; and salvage) hawksbill sea turtles (*Eretmochelys imbricata*) in conjunction with research and recovery activities on the Island of Hawaii for the purpose of enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: September 5, 2014.

Hugh Morrison,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2014–21764 Filed 9–11–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–N195; FXIA16710900000–145–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before October 14, 2014.

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials

concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Busch Gardens, Tampa, FL; PRT–36222B

The applicant and the Los Angeles Zoo and Botanical Gardens request a permit to import two males and one female captive bred Bornean orangutans (*Pongo pygmaeus pygmaeus*) from the Auckland Zoological Park, Auckland, New Zealand, for the purpose of enhancement of the survival of the species through captive breeding.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Michael Mayo, Bountstown, FL; PRT–36632B

Applicant: Avedissian Armen, La Canada, CA; PRT–37078B

Applicant: Hugh Sanderson, Sumrall, MS; PRT–36443B

Applicant: Mitchel Arnold, Littleton, CO; PRT–39979B

Applicant: Roy Deford, Lanexa, VA; PRT–43439B

Applicant: Noel Weidner, San Diego, CA; PRT–43441B

Applicant: Ron Stevens, Katy, TX; PRT–43358B

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2014–21752 Filed 9–11–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2014–N194; FXIA16710900000–145–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2280; or email *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Endangered Species			
21102B	Michael Haug	79 FR 835; January 7, 2014	September 2, 2014.
673338	4 J Conservation Center, Inc	79 FR 39409; July 10, 2014	August 25, 2014.
082541	Daniel Darby	79 FR 39409; July 10, 2014	August 25, 2014.
33738B	Ryder Scientific, R.L.L.L.P	79 FR 39409; July 10, 2014	August 29, 2014.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
		Marine Mammals	
38124B	Poles D'Images	79 FR 36090; June 25, 2014	August 25, 2014.
38035B	Renegade Pictures	79 FR 36090; June 25, 2014	September 3, 2014.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2280.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2014–21753 Filed 9–11–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2014–N180; FXES11130100000–145–FF01E00000]

Endangered Species; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service, have issued the following permits to conduct certain activities with endangered species under the authority of the Endangered Species Act, as amended (Act).

ADDRESSES: Program Manager for Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION: We have issued the following permits to conduct activities with endangered species in response to recovery and interstate commerce permit applications we received under the authority of section 10 of the Act (16 U.S.C. 1531 *et seq.*). These permits were issued between January 1 and June 30, 2014. Each permit listed below was issued only after we determined that it was applied for in good faith, that granting the permit would not be to the disadvantage of the listed species, that the proposed activities were for scientific research or would benefit the recovery or the enhancement of survival of the species, and that the terms and conditions of the permit were consistent with the purposes and policy set forth in the Act.

Applicant	Permit No.	Date issued	Date expires
Oregon Department of Fish and Wildlife	21614B	1/30/2014	1/29/2018
Washington Department of Fish and Wildlife	19239B	3/11/2014	3/10/2019
Power Engineers, Inc.	24048B	3/13/2014	3/12/2018
Dibben-Young, Arleone	146777	3/21/2014	3/20/2017
Westergard, Eric W.	28628B	4/10/2014	4/9/2015
Fitzpatrick, Greg S.	08913A	4/24/2014	6/29/2018
USDA Forest Service, Institute of Pacific Islands Forestry	28360B	6/11/2014	6/10/2019
Amnis Opes Institute, LLC	98468A	6/11/2014	6/10/2018

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents (see **FOR FURTHER INFORMATION CONTACT**).

Authority: We provide this notice under the authority of section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: September 5, 2014.

Hugh Morrison,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2014–21767 Filed 9–11–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX14LQ00DXG0200]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, Classification of biogeomorphic attributes and imagery of coastal habitats.

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: To ensure that your comments are considered, we must receive them on or before November 12, 2014.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'Information Collection 1028—NEW', ''Classification of biogeomorphic attributes and imagery of coastal habitats'' in all correspondence.

FOR FURTHER INFORMATION CONTACT: E. Robert Thieler, Research Geologist, at 508–457–2350 or *rthieler@usgs.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection will be done by trained and vetted personnel to record information about habitats on coastal beaches and the environment surrounding them. It will collect geographic location information, date and time of observation, site identification information, photographic images, and includes a simple biogeomorphic landscape classification of geomorphologic and vegetation characteristics. Federal and non-federal partners are the targeted users. PII will not be collected.

The data collected will be used as input into research models of habitat utilization by beach-dependent species. Model outputs will be used to understand habitat availability and utilization in the future as the coast evolves in response to climate and sea-level change. This information can be used to inform land and species management decisions.

The USGS office leading the program is the Woods Hole Coastal and Marine Science Center, in collaboration with the USGS Center for Integrated Data Analytics, and the U.S. Fish and Wildlife Service.

II. Data

OMB Control Number: 1028—NEW.

Title: Classification of biogeomorphic attributes and imagery of coastal habitats.

Type of Request: New information collection.

Affected Public: Employees of the U.S. Geological Survey, National Park Service and U.S. Fish and Wildlife Service, non-governmental organizations, non-federal cooperators/collaborators (e.g., academic scientists, resource managers), other Federal, State, or local entities (state agencies, counties, towns).

Respondent's Obligation: None. Participation is voluntary.

Frequency of Collection: Data will be collected on an occasional basis, typically during the active growing and breeding season (May–September).

Estimated Annual Number of Respondents: 100.

Estimated Total Number of Annual Responses: 4000.

Estimated Time per Response: 20 minutes first time including training and setup, 5 minutes per response thereafter.

Estimated Annual Burden Hours: (4000 responses) * (5 minutes/response on average) = 334 hours/year estimate.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: None.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, et seq.) provides that an agency 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 and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Dated: September 8, 2014.

Walter A. Barnhardt,

Director, Woods Hole Coastal Marine Science Center.

[FR Doc. 2014–21730 Filed 9–11–14; 8:45 am]

BILLING CODE 4311–AM–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Stainless Steel Products, Certain Processes for Manufacturing or Relating to Same and Certain Products Containing Same, DN 3031;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Valbruna Slater Stainless, Inc., Valbruna Stainless, Inc. and Acciaierie Valbruna S.p.A. on September 5, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain stainless steel products, certain processes for manufacturing or relating to same and certain products containing same. The complaint names as respondents Viraj Profiles Limited of India; Viraj Holdings P. Ltd. of India; Viraj-U.S.A., Inc. of Garden City, NY; Flanschenwerk Bebitz GmbH of Germany; Bebitz Flanges Works Pvt. Ltd. of India; Bebitz U.S.A. of Garden City, NY; Ta Chen Stainless Pipe Co., Ltd. of Taiwan and Ta Chen International, Inc. of Long Beach CA. The complainant requests that the Commission issue a limited exclusion order and cease and desist orders.

Proposed respondents, other interested parties, and members of the

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3031'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *Electronic Filing Procedures* [4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 8, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–21711 Filed 9–11–14; 8:45 am]

BILLING CODE P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1233, 1234, and 1236 (Final)]

Grain-Oriented Electrical Steel From Germany, Japan, and Poland; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (''the Act''), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Germany, Japan, and Poland of grain-oriented electrical steel, provided for in subheadings 7225.11.00, 7226.11.10, and 7226.11.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Rhonda K. Schmidtlein dissented.

Background

The Commission instituted these investigations effective September 18, 2013, following receipt of a petition filed with the Commission and Commerce by AK Steel Corp., West Chester, Ohio; Allegheny Ludlum, LLC, Pittsburgh, Pennsylvania; and the United Steelworkers, Pittsburgh, Pennsylvania. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of grain-oriented electrical steel from Germany, Japan, and Poland were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 4, 2014 (79 FR 32310). The hearing was held in Washington, DC, on July 24, 2014, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission completed and filed its determinations in these investigations on September 8, 2014. The views of the Commission are contained in USITC Publication 4491 (September 2014), entitled *Grain-Oriented Electrical Steel from Germany, Japan, and Poland: Investigation Nos. 731–TA–1233, 1234, and 1236 (Final).*

By order of the Commission.

Issued: September 8, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–21724 Filed 9–11–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1225 (Final)]

Ferrosilicon From Venezuela

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Venezuela of ferrosilicon, provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective July 19, 2013, following receipt of a petition filed with the Commission and Commerce by Globe Specialty Metals, Inc., New York, New York; CC Metals and Alloys, LLC, Calvert City, Kentucky; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union; and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of ferrosilicon from Venezuela were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 31, 2014 (79 FR 18065). The hearing was held in Washington, DC, on July 29, 2014, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission completed and filed its determination in this investigation on September 8, 2014. The views of the Commission are contained in USITC Publication 4490 (September 2014), entitled *Ferrosilicon From Venezuela: Investigation No. 731–TA–1225 (Final).*

By order of the Commission.

Issued: September 8, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–21709 Filed 9–11–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–031]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 18, 2014 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1022 (Second Review) (Refined Brown Aluminum Oxide from China). The Commission is currently scheduled to complete and file its determinations and views of the Commission on October 1, 2014.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: September 9, 2014.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–21924 Filed 9–10–14; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on August 8, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Rockwell Collins, Cedar Rapids, IA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on May 19, 2014. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 19, 2014 (79 FR 35186).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–21747 Filed 9–11–14; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI System Alliance, Inc.

Notice is hereby given that, on August 8, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, elowerk GmbH & Co. KG, Ahrensburg, GERMANY, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on May 19, 2014. A

notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 19, 2014 (79 FR 35187).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–21746 Filed 9–11–14; 8:45 am]

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DEPARTMENT OF LABOR

Advisory Committee on Increasing Competitive Integrated Employment for Individuals With Disabilities

AGENCY: U.S. Department of Labor, Office of Disability Employment Policy.

ACTION: Solicitation for Nominations To Serve on the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities.

SUMMARY: The Secretary of Labor (Secretary) invites interested parties to submit nominations for individuals to serve on the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the Committee) is mandated by section 609 of the Rehabilitation Act of 1973, as amended by section 461 of the Workforce Innovation and Opportunity Act (WIOA). It is established by the Secretary of Labor and in accordance with the provision of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. The purpose of the Committee is to study and prepare findings, conclusions and recommendations for the Secretary of Labor on (1) ways to increase employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive, integrated employment; (2) the use of the certificate program carried out under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)); and (3) ways to improve oversight of the use of such certificates.

The Committee shall consist of seven federal members: The Assistant Secretary of Disability Employment Policy, the Assistant Secretary for Employment and Training Administration, and the Administrator of the Wage and Hour Division of the Department of Labor; the Commissioner of the Administration on Intellectual and Developmental Disabilities; the Director of the Centers for Medicare and Medicaid Services; the Commissioner of Social Security; and the Commissioner of the Rehabilitation Services Administration.

The Committee shall further consist of approximately twelve representative members, appointed by the Secretary, with at least one representative from each of the following constituencies:

- Self-advocates for individuals with intellectual or developmental disabilities;
- Providers of employment services, including those that employ individuals with intellectual or developmental disabilities in competitive integrated employment;
- Representatives of national disabilities advocacy organizations for adults with intellectual or developmental disabilities;
- Experts with a background in academia or research and expertise in employment and wage policy issues for individuals with intellectual or developmental disabilities;
- Representatives from the employer community or national employer organizations; and
- Other individuals or representatives or organizations with expertise on increasing opportunities for competitive integrated employment for individuals with disabilities.

The Committee is requires to meet no less than eight times. It is also required to submit an interim report to the Secretary of Labor; the Senate Committee on Health, Education, Labor and Pensions; and the House Committee on Education and the Workforce within one year of the Committee's establishment. A final report must be submitted to the same entities no later than two years from the Committee establishment date. The Committee terminates one day after the submission of the final report.

Nomination Process: Any interested person or organization may nominate one or more qualified individuals for membership. If you would like to nominate an individual or yourself for appointment to the Committee, please submit the Department of Labor's Committee address, *IntegratedCompetitiveEmployment@dol.gov,* the following information:

- A copy of the nominee's resume;
- A cover letter that provides your reason(s) for nominating the individual, the constituency area that they represent (as outlined above), and their particular expertise for contributing to national policy discussions regarding increasing integrated, competitive employment for youth and adults with significant disabilities; and
- Contact information for the nominee (name, title, business address, business phone, fax number, and business email address).

In addition, the cover letter must state that the nominee (if nominating someone other than oneself) has agreed to be nominated and is willing to serve on the Committee. Nominees will be appointed based on the demonstrated qualifications, professional experience, and demonstrated knowledge of issues related to the purpose and scope of the Committee.

The Secretary shall appoint members for the full two-year life of the Committee. Any member appointed to fill a vacancy occurring prior to the expiration of the Committee shall be appointed for the remainder of such term.

Members will serve without compensation. However, members may each receive reimbursement for travel expenses for attending Committee meetings, including per diem in lieu of subsistence, as authorized by the Federal travel regulations.

DATES: Nominations for individuals to serve on the Committee must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand delivered) by October 14, 2014.

ADDRESSES: You may submit nominations, including attachments, by any of the following methods:

- *Electronically:* Send to: INSERT EMAIL ADDRESS FOR COMMITTEE (specify in the email subject line, ''Advisory Committee on Increasing Competitive, Integrated Employment'')
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy of the documents listed above to the following address: U.S. Department of Labor, Office of Disability Employment Policy, Advisory Commission on Increasing Competitive Integrated Employment, Room S–1303, 200 Constitution Ave. NW., Washington, DC 20210

For questions, contact Christopher Button, Office of Disability Employment Policy, at *button.christopher@dol.gov.*

Dated: September 8, 2014.

Christopher P. Lu,

Deputy Secretary of Labor.

[FR Doc. 2014–21834 Filed 9–11–14; 8:45 am]

BILLING CODE 4510–23–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2014–055]

Records Management; General Records Schedules (GRS); GRS Transmittal

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of new General Records Schedules (GRS) Transmittal 23.

SUMMARY: NARA is providing notice that it is issuing a new General Records Schedules (GRS) Transmittal. The GRS provides mandatory disposition instructions for administrative records common to several or all Federal agencies. Transmittal 23 announces changes to the GRS made since Transmittal 22 was published in April 2010. NARA is completely rewriting the GRS over the course of a five-year project. The master plan for that project was published in 2013 under records management memo AC 02.2013 (*http://www.archives.gov/records-mgmt/memos/ac02-2013.html*). The plan has since morphed in some details but its major outlines remain solid. Transmittal 23 is the first installment of the new GRS.

DATES: This document is effective on the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For information about this notice or to obtain non-electronic copies of the GRS, contact Kimberly Keravuori, Agency Regulations Program Manager, at *regulations_comments@nara.gov*, or by telephone at 301.837.3151.

You may contact NARA's GRS Team (within Records Management Services in the National Records Management Program, Office of the Chief Records Officer) with general questions about the GRS at *GRS_Team@nara.gov*.

Your agency's records officer may contact the NARA appraiser or records analyst with whom your agency normally works for support in carrying out this transmittal. A list of the appraisal and scheduling work group and regional contacts is posted on the NARA Web site at *http://www.archives.gov/records-mgmt/appraisal/index.html*.

SUPPLEMENTARY INFORMATION:

What is GRS Transmittal 23 and how do I use it?

GRS Transmittal 23, disseminated to all agencies' records management officials and posted on NARA's Web site at *http://www.archives.gov/records-mgmt/grs/*, contains:

- Five new schedules, each with schedule-specific FAQs and a crosswalk from new to old schedules
- old schedules annotated to show which items are still authoritative and which are superseded by items in new schedules
- a crosswalk for old to new GRS items
- four FAQ documents (general; about the GRS Update Project; about the impact of the new GRS on agencies; and about how, when, and the process by which agencies may deviate from the GRS), and
- a checklist for implementing the new GRS, to assist agencies in completing all the actions this Transmittal requires.

What changes have been made to the GRS?

Transmittal 23 publishes five new schedules:

GRS 1.1 Financial Management and Reporting Records (DAA–GRS–2013–0003)

GRS 1.2 Grant and Cooperative Agreement Records (DAA–GRS–2013–0008)

GRS 3.1 General Technology Management Records (DAA–GRS–2013–0005)

GRS 3.2 IT Systems Security (DAA–GRS–2013–0006)

GRS 4.3 Input Records, Output Records, and Electronic Copies (DAA–GRS–2013–0001)

These schedules replace portions of old GRS 3, 4, 6, 7, 8, 9, 12, 16, 20, 23, and 24.

The most obvious changes are in format:

	Old GRS	New GRS
Schedule numbers	Simple succession: 1, 2, 3, etc	Decimal: 1.1, 1.2, 1.3, etc. Schedules of related topics are linked by sharing the same number to the left of the decimal point but differentiated by the number to the right of the decimal point.
Item numbers	Alpha-numeric hierarchy, for instance 1a1, 1a2, 2a1a, 2a2b.	Three digits, for instance 010, 020, 030. Closely related items sharing some description in common are numbered in immediate succession, such as 030, 031, 032, etc.
Layout	Narrative paragraphs. Read "down" to go from records description to records disposition.	Table. Read "across" to go from records description to records disposition.
Subject Index	Index was last updated in 2008. Even then, it was not thorough, and its usefulness was linked to paper format.	No index. Citations to new GRS items are not included in the current index, which will be phased out over time. Search for key words in pdf file instead.

Because the entire change from old to new is taking place gradually over five years, the GRS during this interim period will necessarily include both old and new formats. New schedules (decimal numbers, table format) come first in the new transmittal, followed by the old schedules ("straight" numbers, narrative format) annotated to show which items are still current and which have been superseded by new schedules.

What GRS items are rescinded by Transmittal 23?

Many old GRS items are superseded by new GRS items. A few old items, however, have outlived their usefulness and cannot be crosswalked to new items. Therefore, these items are rescinded by Transmittal 23. Full explanation of why items have been rescinded is discussed in the FAQs for the new schedule to which they are most closely related.

GRS	Items	Title	FAQ in which discussed
3	3b	Obligation copy of routine procurement files	1.1
3	15a	Contract appeal case files prior to October 1979	1.1

GRS	Items	Title	FAQ in which discussed
3	16	Contractor's statement of contingent or other fees	1.1
6	2	GAO exceptions	1.1
6	6a1–6a2	Federal personnel surety bonds	1.1
6	6b	Other bonds	1.1
6	9	Telegrams supporting telegraph bills	1.1
8	7b1–7b3	Cost report data files	1.1
20	2a1–2a3	Input/source records: Certain hard copy records	4.3
20	3a, 3b1–3b5	Electronic records replacing temporary hard copy records	4.3
20	3.1	Electronic records replacing permanent hard copy records	4.3

Rescinded items are shown in context of their schedules in the old-to-new crosswalk.

How do I cite new GRS items?

When you send records to a Federal Records Center for storage, you should cite its legal authority: The ''DAA'' number in the ''Disposition Authority'' column of the table. For instance: DAA–GRS–2013–0001–0004. For informal purposes, cite by schedule and item number. The above DAA number equates to ''GRS 4.3, item 020.''

Do I have to take any action to implement these GRS changes?

NARA regulations (36 CFR 1226.12(a)) require agencies to disseminate GRS changes within 6 months of receipt.

Per 36 CFR 1227.12(a)(1), you must follow GRS dispositions that state they must be followed without exception.

Per 36 CFR 1227.12(a)(3), if you have an existing schedule that differs from a new GRS item that does *not* require being followed without exception, and you wish to continue using your agency-specific authority rather than the GRS authority, you must notify NARA within 120 days of the date of this Transmittal.

If you do not have an already existing agency-specific authority but wish to apply a retention period that differs from that specified in the GRS, you must create a records schedule in the Electronic Records Archives and submit it to NARA for approval.

How do I get copies of the new GRS?

The complete current GRS, in PDF format, can be downloaded from NARA's Web site at *http://www.archives/gov/records-mgmt/grs/index.html*.

Dated: September 4, 2014.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2014–21756 Filed 9–11–14; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA–14–025–EA; ASLBP No. 14–932–02–EA–BD01]

In the Matter of James Chaisson (Enforcement Action); Notice of Hearing and Initial Scheduling Order

September 8, 2014.

Atomic Safety and Licensing Board

Before Administrative Judges: Alex S. Karlin, Chairman, Michael M. Gibson and Dr. Gary S. Arnold

I. Introduction

This proceeding concerns a July 11, 2014 enforcement order issued by Patricia K. Holahan, Acting Director, Office of Enforcement of the U.S. Nuclear Regulatory Commission (Director) against Mr. James P. Chaisson.[1] The Director alleges that Mr. Chaisson failed to comply with certain provisions of a confirmatory order that the Director issued to him in 2012 (2012 Order). *Id.* at 42,058. Mr. Chaisson requested an ''expedited hearing''[2] and filed an answer denying certain aspects of the 2014 Order.[3] The Director filed an answer to Mr. Chaisson's answer.[4] The Director does not oppose Mr. Chaisson's request for a hearing. *Id.*

Pursuant to 10 CFR 2.329(a), on August 26, 2014, this Board conducted the initial scheduling conference in this matter.[5] Our purpose was to discuss the development of an initial scheduling order (ISO) that would help achieve the just resolution of this dispute as efficiently and expeditiously as possible. The conference was conducted telephonically. The Director was represented in the conference by the NRC's Office of General Counsel. Mr. Chaisson participated without representation.[6]

During the initial scheduling conference, Mr. Chaisson withdrew his request that the hearing be expedited. Tr. at 27, 65–66. Mr. Chaisson's request for expedition was based on his concern that he would not be able to continue working if the 2014 Order went into effect before the hearing.[7] However on August 14, 2014, the Director informed Mr. Chaisson that the 2014 Order ''is not effective until the Atomic Safety and Licensing Board rules on your hearing.'' Director's Answer at 1 n.3. During the conference call, counsel for the Director confirmed that Mr. Chaisson's current responsibilities in his current job are not prohibited by the 2014 Order (because it is not in effect) or by the 2012 Order. Tr. at 25. On that basis, Mr. Chaisson withdrew his request to expedite the hearing. Tr. at 27, 65–66.

In addition, during the initial scheduling conference, the parties acknowledged that 10 CFR part 2, Subpart G (the regulations applicable to enforcement proceedings) govern this adjudication.[8] Accordingly, this ISO is based, in part, on the Subpart G regulations.

[1] In the Matter of James Chaisson, 79 FR 42,057 (July 18, 2014) (2014 Order).

[2] Email from James Chaisson to NRC Hearing Docket (July 18, 2014).

[3] Request for Hearing Submitted by James Chaisson (Aug. 4, 2014) (Hearing Request).

[4] NRC Staff Answer to Request for Hearing (Aug. 15, 2014) (Director's Answer).

[5] *See* Order (Scheduling Initial Prehearing Conference) (Aug. 14, 2014) (unpublished).

[6] Given that Mr. Chaisson is unrepresented, the Board will carefully scrutinize any agreement or consent by him purporting to waive or abandon any of his substantive or procedural rights. *See* Order (Scheduling Initial Prehearing Conference) (Aug. 14, 2014) (unpublished) at 4 n.5. We will look to see if any such consent or waiver is fully informed. Director's counsel should be especially scrupulous in informing Mr. Chaisson of the nature and extent of the rights that they might suggest that he waive or abandon. We also reminded counsel that their ethical duty of candor (*e.g.,* their duty to disclose to this tribunal any relevant information and/or legal authority that is adverse to the Director's position) is especially important in cases such as this one, where the target of the government's enforcement action is not represented by counsel. *See* Model Rules of Professional Conduct R. 3.3(a)(3); 10 CFR 2.323(d) and 2.314.

[7] Emails from James Chaisson to NRC Hearing Docket (Aug 4, 2014, 17:14 EDT; Aug. 6, 2014).

[8] Tr. at 38. *See* 10 CFR 2.310(b) (''Proceedings on enforcement matters must be conducted under the procedures of subpart G of this part, unless all parties agree [otherwise].'')

II. Notice of Hearing

The Board grants Mr. Chaisson's request for a hearing and, pursuant to 10 CFR 2.312, issues this notice of hearing. Indeed, Mr. Chaisson, who is the target of the Director's enforcement order, has the right to demand and receive, not merely request, a hearing. *See* 10 CFR 2.202(a)(3). The Board intends to conduct the hearing in Salt Lake City, Utah, at a time and place to be determined later. The hearing and this adjudication will be conducted under 10 CFR part 2, Subpart G.

III. Identification of Disputed Issues

NRC regulations require that this ISO set forth ''the issues or matters in controversy to be determined in the proceeding.'' 10 CFR 2.329(e). This is important because the scope and content of this adjudication, and the evidentiary hearing herein, are defined by the issues and matters that are disputed by the parties. For example, the scope of the mandatory disclosures that the parties must make under Subpart G is defined by the ''disputed issues alleged with particularity in the pleadings.'' 10 CFR 2.704(a)(2), 2.709(a)(6). Likewise, the scope of discovery under Subpart G covers any matter ''that is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party.'' 10 CFR 2.705(b)(1).

Based on the written pleadings and the discussion during the initial prehearing conference, the issues and matters in controversy, as we see them now, are defined by the allegations in the Director's 2014 Order and the responses contained in Mr. Chaisson's emails, answer and statements during the conference.

A. The Director's Allegations Include the Following

1. Mr. Chaisson was employed from April 2009 through April 2010 as an area supervisor and lead radiographer for the Wyoming operations of Texas Gamma Ray, LLC (TGR), which, at that time, held a license issued by the NRC pursuant to 10 CFR part 34. The license authorized TGR to conduct certain radiographic operations. 79 FR at 42,057.

2. On May 15, 2012, the NRC issued an order to Mr. Chaisson prohibiting him from engaging in NRC-licensed activities for a 3-year period. *Id.*

3. The May 15, 2012 order was based on NRC's claim that Mr. Chaisson ''engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1). Specifically, the NRC concluded that Mr. Chaisson chose to store a radiographic exposure device at a facility he knew did not comply with applicable NRC security requirements and was not an authorized storage location under TGR's license.'' *Id.*

4. Mr. Chaisson requested alternative dispute resolution (ADR) concerning the May 15, 2012 order. *Id.* A mediation session was conducted on July 26, 2012. *Id.*

5. As a result of the ADR, Mr. Chaisson signed an ''Agreement in Principal [sic] . . . in which he agreed to terms and conditions to be memorialized in a Confirmatory Order.'' *Id.*

6. On September 10, 2012, NRC issued a ''Confirmatory Order based on the Agreement in Principal [sic].'' *Id.* [This Confirmatory Order is referred to herein as the ''2012 Order.'']

7. Among other things, the 2012 Order prohibited Mr. Chaisson from engaging in NRC-licensed activities for an 18-month period, during which time he was required:

a. To complete a 40-hour formal training course designed for qualifying radiation safety officers;

b. To complete a 40-hour formal training course that meets or exceeds the requirements of 10 CFR 34.43; and

c. To submit an article to NRC ''articulating the importance of compliance with NRC regulations and providing full and accurate information.'' *Id.* at 42,057–58.

8. On March 28, 2014, Mr. Chaisson contacted NRC to determine what kind of training would be acceptable to meet the requirements of the 2012 Order and on March 31, 2014, he requested a 6-month extension to fulfill the requirements of the 2012 Order. *Id.* at 42,058.

9. Contrary to the requirements of the 2012 Order, Mr. Chaisson failed to complete the two 40-hour training courses, and failed to submit the article to NRC within the 18-month period specified in the 2012 Order. *Id.*

10. ''Mr. Chaisson's actions [specified in the previous paragraph 9] constitute a violation of NRC requirements.'' *Id.*

11. ''Based on the deliberate misconduct on which the May 15, 2012, Order was based, and Mr. Chaisson's violation of the September 10, 2012 Confirmatory Order, I [the Director] lack the requisite reasonable assurance that Mr. Chaisson can be relied upon, at this time, to comply with the Commission's requirements and that the health and safety of the public will be protected if Mr. Chaisson were permitted at this time to be involved in NRC-licensed activities.'' *Id.*

12. On the foregoing basis, the Director issued the 2014 Order.

B. Mr. Chaisson's Allegations Include the Following

1. He did not deliberately violate any NRC requirements as alleged in the 2012 Order. Email from James Chaisson to NRC Hearing Docket (Aug. 4, 2014, 12:02 EDT).

2. The 2012 Order does not accurately represent what he agreed to in the 2012 mediation process. Tr. at 43.

3. He complied with the provision of the 2012 Order that required him to write and submit an article. Hearing Request.

4. He attempted to comply with the provisions of the 2012 Order that required him to attend two 40-hour training courses, but circumstances beyond his control prevented him from doing so. Hearing Request.

5. He requested that NRC grant him an extension for complying with the requirement of the 2012 Order that he attend two 40-hour training courses. 79 FR at 42,058.

6. He did not deliberately violate the 2012 Order. Email from James Chaisson to NRC Hearing Docket (Aug. 4, 2014, 12:02 EDT).

7. The sanctions proposed by the 2014 Order are inappropriate and excessive. Tr. at 41.

8. The 2014 Order should not have been issued and should not be sustained.[9]

C. Board Specification of Issues or Matters in Dispute

The Board concludes that the issues listed in Sections III.A and III.B are the ''issues or matters in controversy to be determined in the proceeding.'' 10 CFR 2.329(e). Thus, the scope of the mandatory disclosures, discovery, testimony, exhibits, and any other filings herein will include the foregoing issues and matters.

We note that during the initial prehearing conference, the Director took the position that the scope of the adjudication ''should be limited to whether the 2014 Order was justified and appropriate.'' Tr. at 41. For example, the Director argued that Mr. Chaisson should not be allowed to dispute whether the 2012 Order accurately reflects the mediated settlement because Mr. Chaisson signed an agreement in principle that covered these points. Tr. at 42. The Director also argued that Mr. Chaisson should not be allowed to dispute the original

[9] *See* Hearing Request; Emails from James Chaisson to NRC Hearing Docket (July 18, 2014; Aug. 4, 2014, 12:02 EDT; Aug. 4, 2014, 17:14 EDT; Aug. 6, 2014).

violations that formed the basis of the 2012 Order, *i.e.,* whether, in 2009–2010, Mr. Chaisson deliberately violated NRC regulations. Tr. at 47. The Director argued that the current dispute should be limited to whether Mr. Chaisson violated the terms of the 2012 Order. *Id.*

We do not agree. First, Mr. Chaisson asserts that the 2012 Order does not accurately reflect what he agreed to in 2012. Tr. at 45. If Mr. Chaisson asserts that he did not agree to undergo the two 40 hour training courses and to submit an article to the NRC within 18 months, then he may present evidence to that effect. Likewise, if the Director (who has the burden of proof herein) has a written agreement in principle, signed by Mr. Chaisson, specifying that he agreed to those terms and conditions, then the Director may present such evidence at the hearing.[10]

Second, the 2014 Order explicitly states that the Director's findings and the sanctions she seeks to impose on Mr. Chaisson, are, in part, ''[b]ased on the deliberate misconduct on which the May 15, 2012, Order was based.'' 79 FR at 42,058. Meanwhile, Mr. Chaisson disputes that he ever engaged in such deliberate misconduct. Tr. at 56–57. This issue is clearly within the scope of this proceeding. While this proceeding will not litigate the validity of the 2012 Order (Mr. Chaisson did not challenge that order in 2012),[11] the scope of the current proceeding definitely includes the appropriateness of the sanctions specified in the 2014 Order. The appropriateness of the sanctions in the 2014 Order is based, in significant part, on NRC's allegation that he engaged in deliberate misconduct in 2009–2010. This is an issue or matter in dispute in this case, and the Director and Mr. Chaisson are entitled to present evidence on it.

D. Clarification or Simplification of the Disputed Issues

The issues and matters in dispute that are listed in sections III.A and III.B above are subject to modification and adjustment. For example, during the prehearing conference, we encouraged the Director and Mr. Chaisson to communicate with each other to attempt to settle, clarify, or simplify the issues and matters in dispute. Tr. at 85–87. Pursuant to that discussion, Section IV.A of this order instructs the parties to consult with each other by September 30, 2014, and for the Director to submit a report to the Board concerning the results of that consultation by October 10, 2014. That consultation and report should include any jointly proposed modifications or adjustments to the matters listed in Sections III.A and III.B.

IV. Schedule

In addition to the general deadlines and time frames applicable to proceedings under 10 CFR Part 2, the Board establishes the following initial schedule for this matter.[12]

A. Initial Meeting of the Parties

NRC's Subpart G regulations specify that, as soon as practicable after the issuance of the ISO, the parties shall ''meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the proceeding or any portion thereof, to make or arrange for the disclosures required by § 2.704, and to develop a proposed discovery plan.'' 10 CFR 2.705(f). In accordance with these regulations, the parties shall consult. In addition to the foregoing topics, they shall discuss whether either party claims that confidential or protected information is involved in this proceeding and whether a protective order may be necessary. Specifically,

1. By September 30, 2014, the Director and Mr. Chaisson shall consult (either in person or telephonically) to discuss the matters specified above; and

2. By October 10, 2014, the Director or her representative shall file a brief report with the Board reciting the results of the consultation. This report should

a. Identify any jointly proposed amendments, clarifications or simplifications to the issues and disputed matters listed in Sections III.A and III.B of this ISO;

b. Include a proposed discovery plan that comports with the schedule and deadlines set forth in this ISO;

c. Specify if either party believes that a protective order is necessary and, if so, submit a proposed protective order;[13] and

d. Specify if the parties wish to pursue settlement or to seek to have a Settlement Judge appointed pursuant to 10 CFR 2.338(b).

3. By October 17, 2014, Mr. Chaisson may file an answer to the report.

4. Settlement is encouraged, but the parties should be aware that the fact that they are negotiating a possible settlement does not change any of the deadlines set forth in this ISO. *See* 10 CFR 2.338(f).

B. Mandatory Disclosures

NRC's Subpart G regulations specify that, unless the Board mandates otherwise, within 45 days of the ISO each party must automatically disclose to the other party certain information and documents. For example, within 45 days the NRC Enforcement Director must provide Mr. Chaisson with a copy of all NRC Staff documents that are ''relevant to disputed issues alleged with particularity in the pleadings [i.e., listed in Sections III.A and III.B herein].'' 10 CFR 2.709(a)(6)(i)(A). Likewise, within 45 days Mr. Chaisson must provide certain information and documents to the NRC Enforcement Director. *See* 10 CFR 2.704(a). That 45-day deadline, however, conflicts with the timing of the consultation mandated by 10 CFR 2.705(f) and discussed in Section IV.A above. Accordingly,

1. In lieu of the 45-day deadline, Mr. Chaisson and the Director shall make their initial mandatory disclosures to each other by November 4, 2014;

2. Mr. Chaisson and the Director shall update their mandatory disclosures monthly, on the second Wednesday of each month; and

3. The monthly updates shall continue until the Board issues its decision after the hearing.

C. Discovery

NRC's Subpart G regulations specify that, in addition to the mandatory disclosures specified above, and within certain constraints, Mr. Chaisson may pursue discovery against the Director. *See* 10 CFR 2.709 (''Discovery against NRC staff''). For example, Mr. Chaisson (a) may serve written questions (referred to as ''interrogatories'') on the Director, (b) must show that the answers to the

[10] The issue—whether or not the 2012 Order accurately reflects what Mr. Chaisson agreed to—focuses on the final result of the mediation, not the various communications made by the parties or the mediator during the mediation process. Both parties may present evidence whether the 2012 Order accurately reflects the result of the mediation. But neither party will be allowed to present evidence concerning the back and forth communications that the parties exchanged during the mediation process. We are not going to rehash who said what to whom during the mediation. Likewise, the mediator may not be called as a witness in this proceeding. This comports with Rule 408 of the Federal Rules of Evidence, which states, in part: ''Evidence of conduct or statements made in compromise negotiations is . . . not admissible.''

[11] While we will allow Mr. Chaisson to use this adjudication to argue (and present evidence) that the 2012 Order is inaccurate (that is that it does not correctly reflect what he agreed to in 2012), we will not allow him to use this adjudication to argue that the 2012 Order is invalid or should be overturned. If he had wanted to challenge the validity of the 2012 Order, he should have done so in 2012.

[12] In any conflict between this ISO and the general rules of 10 CFR part 2 (including the model milestones set forth in 10 CFR part 2, Appendix B), the deadlines specified in the ISO shall govern.

[13] See *Pacific Gas and Electric Company* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), LBP–11–5, 73 NRC 131 (2011) for an example of a protective order.

interrogatories are necessary to a proper decision in this proceeding, and (c) ask the Board to direct the Director to answer those interrogatories. *See* 10 CFR 2.709(a)(2). If the Board agrees, it will instruct the Director to answer the interrogatories. In addition, Mr. Chaisson may require a member of the NRC Enforcement Director's staff to attend a prehearing meeting where he can require that staff member answer questions orally under oath (this is referred to as a ''deposition''). *See* 10 CFR 2.709(a)(1), (3) and (4). Likewise, counsel for the Director may take the deposition of Mr. Chaisson or any other person, *see* 10 CFR 2.706(a); may file written interrogatories that Mr. Chaisson must answer, *see* 10 CFR 2.705(b); and may require him to provide the Director with a copy of any designated relevant document that is within his possession, custody or control, *see* 10 CFR 2.707(a). Neither party is required to pursue such discovery. However, any such discovery shall proceed as follows:

1. Such discovery may not begin until October 10, 2014—10 days after Mr. Chaisson and the Director have held the consultation mandated by 10 CFR 2.705(f); [14]

2. Such discovery must be completed by January 15, 2015.

D. Motions for Summary Disposition

Given the factual nature of the issues and matters in dispute herein, the Board concludes that motions for summary disposition (and any other form of dispositive motion) would be unproductive and would divert Mr. Chaisson and the Director from preparing adequately for the evidentiary hearing. Accordingly, no such motions may be filed.

E. Second Prehearing Conference

The Board contemplates that the prehearing filings that each party must make before the evidentiary hearing can occur will need to be filed by February 20, 2015, and that the evidentiary hearing will occur in mid to late March 2015. At the moment, however, we are not mandating those specific deadlines. Instead, the Board will hold a second prehearing conference before January 30, 2015. The purpose of the second prehearing conference will be to set a specific time, date, and location for the evidentiary hearing and to establish firm deadlines for the prehearing filings that the parties must make.

V. Fifth Amendment Issues

The Fifth Amendment to the Constitution of the United States provides, in pertinent part, that no person ''shall be compelled in any criminal case to be a witness against himself.'' The 2014 Order issued by the Director, and this adjudicatory proceeding, are administrative actions and do not constitute a criminal case. During the initial prehearing conference, however, counsel for the Director stated that there is a ''potential'' that a criminal case could arise concerning Mr. Chaisson's alleged violations. Tr. at 91. Given that Mr. Chaisson has no legal representation, it is incumbent on NRC, and this Board, to be alert to such issues and to inform him of his right against self-incrimination in appropriate circumstances. Accordingly, and as ordered during the initial prehearing conference:

A. On September 10, 2014 the Director shall submit a brief to the Board that specifies:

1. Whether there is any potential that NRC will pursue criminal charges against Mr. Chaisson;

2. Whether the NRC is aware that any other federal entity, such as the U.S. Department of Justice, is investigating this matter and/or may pursue criminal charges against Mr. Chaisson;

3. Whether the Director or anyone on the NRC Staff has previously advised Mr. Chaisson of his Fifth Amendment right against self-incrimination, and if so, when and how;

4. Whether the right against self-incrimination attaches or has attached to Mr. Chaisson in this proceeding;

5. If so, when did it attach; and

6. If so, how we should handle this issue and protect Mr. Chaisson's constitutional rights.

B. On September 17, 2014, Mr. Chaisson may file an answer to the Director's report.

VI. Conclusion

This ISO is intended to promote the just resolution of this dispute as efficiently and expeditiously as possible. The deadlines set forth herein are firm, and will not be modified unless a party (in advance of the deadline) petitions this Board for a change and demonstrates to us that there is good cause for such a change. *See* 10 CFR 2.334(b). Appendix A provides a summary of the deadlines set forth in this ISO. The parties should note that settlement negotiations, while encouraged, will not delay this schedule unless the Board affirmatively grants such a delay.

Objections to this ISO must be filed by September 15, 2014. *See* 10 CFR 2.329(e).

It is so *ordered.*

Rockville, Maryland.
Dated: September 8, 2014.

The Atomic Safety and Licensing Board.

Alex S. Karlin,
Chairman, Administrative Judge;

Michael M. Gibson,
Administrative Judge;

Gary S. Arnold,
Administrative Judge.

APPENDIX A—IN THE MATTER OF JAMES CHAISSON: DEADLINES SPECIFIED IN INITIAL SCHEDULING ORDER

Deadline	Action	ISO section
9/10/14	Director files brief concerning 5th Amendment	ISO V.A
9/15/14	Either party may file objections to ISO	ISO VI
9/17/14	Chaisson may file response concerning 5th Amendment	ISO V.B
9/30/14	Initial meeting or consultation of parties	ISO IV.A.1
10/10/14	Director files report of consultation	ISO IV.A.2
10/10/14	Parties can commence discovery	ISO IV.C.1
10/17/14	Chaisson may file response to Director's report	ISO IV.A.3
11/4/14	Parties make initial mandatory disclosures (to be updated monthly thereafter)	ISO IV.B1
1/15/15	End of discovery. Parties must complete discovery by this date	ISO IV.C.2
Before 1/30/15	Board conducts second prehearing conference with the parties to adjust and finalize plans for the hearing.	ISO IV.E
2/20/15 *	Each party files its Prehearing Submittals. (These submittals consist of the party's (a) statement of position, (b) written testimony, and (c) exhibits).	ISO IV.E

[14] This is the same date on which the Director is to submit her report concerning the results of the consultation, including the submission of any jointly proposed discovery plan.

APPENDIX A—IN THE MATTER OF JAMES CHAISSON: DEADLINES SPECIFIED IN INITIAL SCHEDULING ORDER—Continued

Deadline	Action	ISO section
Mid to late March 2015 *	Evidentiary hearing	ISO IV.E

* These dates are subject to change and will be discussed during the second prehearing conference.

[FR Doc. 2014–21827 Filed 9–11–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0224]

Applications of Bioassay for Radioiodine

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 to Regulatory Guide (RG) 8.20, ''Applications of Bioassay for Iodine-125 and Iodine-131.'' The title of this regulatory guide has been changed to ''Applications of Bioassay for Radioiodine.'' It describes methods and criteria acceptable to the NRC staff for the development and implementation of a bioassay program by licensees handling or processing unsealed materials containing Iodine-123 (I–123), Iodine-124 (I–124), Iodine-125 (I–125), Iodine-129 (I–129), and Iodine-131 (I–131), or a combination of these radionuclides.

ADDRESSES: Please refer to Docket ID NRC–2011–0224 when contacting the NRC about the availability of information regarding this document. You may obtain 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–2011–0224. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain 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.* Revision 2 of RG 8.20 is available in ADAMS under Accession No. ML14064A060. The regulatory analysis may be found in ADAMS under Accession Number ML14064A058.
- *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.

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FOR FURTHER INFORMATION CONTACT: Casper Sun, telephone: 301–251–7912, email: *casper.sun@nrc.gov;* or Harriet Karagiannis, telephone: 301–251–7477, email: *harriet.karagiannis@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of RG 8.20 was issued with a temporary identification as draft regulatory guide (DG), DG–8050, entitled, ''Applications for Bioassay for Radioiodine.'' This guide was revised to achieve better alignment with: (1) Part 20 of Title 10 of the *Code of Federal Regulations* (10 CFR); and (2) the internal dose assessment methods recommended by the International Commission on Radiological Protection Publication 30, ''Limits for Intakes of Radionuclides by Workers.'' The content of the guide was also simplified by removing the appendixes of the previous version and including pertinent information in the main sections of the guide. Also, the title was changed because the guide now includes three more radioiodines (I–123, I–124, and I–129), in addition to the two radioiodines (I–125 and I–131) that were included in the previous version.

II. Additional Information

This DG–8050 was published in the **Federal Register** on September 26, 2011, (76 FRN 59448) for a 60-day public comment period. The public comment period closed on November 22, 2011. Public comments on DG–8050 and the NRC staff's responses to the public comments are available in ADAMS under Accession No. ML14064A061.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting and Issue Finality

This RG describes methods that the staff of the NRC considers acceptable for the development and implementation of bioassay programs for adult workers and for licensees handling or processing unsealed materials containing I–123, I–124, I–125, I–129, and I–131 or a combination of these radionuclides. Some of the applicants and licensees to whom this regulatory guide applies are protected by backfitting provisions in certain parts of 10 CFR Chapter I and/or the issue finality provisions in 10 CFR part 52.

Issuance of this RG does not constitute backfitting under 10 CFR 50.109, 10 CFR 70.76, 10 CFR 72.62, or 10 CFR 76.76, and is not inconsistent with any issue finality provisions in 10 CFR part 52. As discussed in the ''Implementation'' section of this regulatory guide, the NRC has no current intention to impose this regulatory guide on any licensees, including holders of licenses protected by the backfitting and issue finality provisions listed above. Applicants for the licenses listed above are not protected by any backfitting and issue finality provisions. Backfitting and the issue finality provisions—with certain exclusions discussed below—are not intended to apply to every NRC action which substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant references a part

52 license (e.g., an early site permit) and/or NRC's regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not, at this time, intend to impose the positions represented in this RG in a manner that is inconsistent with any part 52 issue finality provisions. If, in the future, the staff seeks to impose a position in the regulatory guide section in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality in that issue finality provision.

Dated at Rockville, Maryland, this 8th day of September, 2014.

For the Nuclear Regulatory Commission.

Thomas H. Boyce

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2014–21757 Filed 9–11–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meeting

DATES: Weeks of September 15, 22, 29, October 6, 13, 20, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 15, 2014

Monday, September 15, 2014

1:30 p.m. NRC All Employees Meeting (Public Meeting), Marriott Bethesda North Hotel, 5701 Marinelli Road, Rockville, MD 20852

Tuesday, September 16, 2014

9:50 a.m. Affirmation Session (Public Meeting) (Tentative)

Final Rule: Economic Simplified Boiling Water Reactor Design Certification (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

10:00 a.m. Briefing on Project Aim 2020 (Closed—Ex. 2)

Thursday, September 18, 2014

9:00 a.m. Briefing on Management of Low-Level Waste, High-Level Waste, and Spent Nuclear Fuel (Public Meeting) (Contact: Cinthya I. Román, 301–287–9091)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of September 22, 2014—Tentative

There are no meetings scheduled for the week of September 22, 2014.

Week of September 29, 2014—Tentative

Thursday, October 2, 2014

10:00 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Ed Hackett, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 6, 2014—Tentative

Tuesday, October 7, 2014

9:00 a.m. Briefing on the Status of Near-Term Task Force Recommendation 2.1 for Seismic Hazard Reevaluations (Public Meeting) (Contact: Nicholas DiFrancesco, 301–415–1115)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 13, 2014—Tentative

Wednesday, October 15, 2014

11:00 a.m. Discussion of Management and Personnel Issues (Closed—Ex. 2 and 6)

Week of October 20, 2014—Tentative

There are no meetings scheduled for the week of October 20, 2014.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Rochelle Bavol at (301) 415–1651 or via email at *Rochelle.Bavol@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Patricia.Jimenez@nrc.gov* or *Brenda.Akstulewicz@nrc.gov.*

Dated: September 9, 2014.

Andrew Bates,

Senior Advisor, Office of the Secretary.

[FR Doc. 2014–21933 Filed 9–10–14; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-day notice and request for comments.

SUMMARY: The Office of Chief Information Officer, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an information collection request (ICR) 3206–0257, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until November 12, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of the Chief Information Officer, Records Management and Data Policy, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415, Attention: Paperwork Reduction Act Officer or sent by email to *PRA@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of the Chief Information Officer, Records Management and Data Policy, Office of Personnel Management, 1900 E. Street NW., Washington, DC 20503, Attention: Paperwork Reduction Act Officer or sent by email to *PRA@opm.gov.*

SUPPLEMENTARY INFORMATION: 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 Office of Personnel Management 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 Office of Personnel Management's services will be unavailable.

The Office of Personnel Management 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 Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Officer of the Chief Information Officer, Records Management and Data Policy, Office of Personnel Management.

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 3206–0257.

Frequency: On Occasion.

Affected Public: General Public.

Number of Respondents: 691,631.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 119,394 hours.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–21712 Filed 9–11–14; 8:45 am]

BILLING CODE 6325–47–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services 100 F Street NE., Washington, DC 20549–2736

Extension:

Form N–54C, SEC File No. 270–184, OMB Control No. 3235–0236

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (the ''PRA''), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act''), certain investment companies can elect to be regulated as business development companies, as defined in Section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)). Under Section 54(a) of the Investment Company Act (15 U.S.C. 80a–53(a)), any company defined in Section 2(a)(48)(A) and (B) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)), may if it meets certain enumerated eligibility requirements elect to be subject to the provisions of Sections 55 through 65 of the Investment Company Act (15 U.S.C. 80a–54 to 80a–64) by filing with the Commission a notification of election on Form N–54A (17 CFR 274.53). Under

Section 54(c) of the Investment Company Act (15 U.S.C. 80a–53(c)), any business development company may voluntarily withdraw its election under Section 54(a) of the Investment Company Act (15 U.S.C. 80a–53(a)) by filing a notice of withdrawal of election with the Commission. The Commission has adopted Form N–54C (17 CFR 274.54) as the form for notification of withdrawal of election to be subject to Sections 55 through 65 of the Investment Company Act.

The purpose of Form N–54C is to notify the Commission that the business development company withdraws its election to be subject to Sections 55 through 65 of the Investment Company Act, enabling the Commission to administer those provisions of the Investment Company Act to such companies.

The Commission estimates that on average approximately 10 business development companies file these notifications each year. Each of those business development companies need only make a single filing of Form N–54C. The Commission further estimates that this information collection imposes a burden of one hour, resulting in a total annual PRA burden of 10 hours. Based on the estimated wage rate, the total cost to the business development industry of the hour burden for complying with Form N–54C would be approximately $3,200.

The collection of information under Form N–54C is mandatory. The information provided by the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21735 Filed 9–11–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension:

Rule 17a–10, SEC File No. 270–154, OMB Control No. 3235–0122

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17a–10 (17 CFR 240.17a–10) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act'').

The primary purpose of Rule 17a–10 is to obtain the economic and statistical data necessary for an ongoing analysis of the securities industry. Paragraph (a)(1) of Rule 17a–10 generally requires broker-dealers that are exempted from the requirement to file monthly and quarterly reports pursuant to paragraph (a) of Exchange Act Rule 17a–5 (17 CFR 240.17a–5) to file with the Commission the Facing Page, a Statement of Income (Loss), and balance sheet from Part IIA of Form X–17A–5 [1] (17 CFR 249.617), and Schedule I of Form X–17A–5 not later than 17 business days after the end of each calendar year.

Paragraph (a)(2) of Rule 17a–10 requires a broker-dealer subject to Rule 17a–5(a) to submit Schedule I of Form X–17A–5 with its Form X–17A–5 for the calendar quarter ending December 31 of each year. The burden associated with filing Schedule I of Form X–17A–5 is accounted for in the PRA filing associated with Rule 17a–5.

Paragraph (b) of Rule 17a–10 provides that the provisions of paragraph (a) do not apply to members of national securities exchanges or registered national securities associations that maintain records containing the information required by Form X–17A–5 and which transmit to the Commission copies of the records pursuant to a plan which has been declared effective by the Commission.

The Commission estimates that approximately 38 broker-dealers will spend an average of 12 hours per year complying with Rule 17a–10. Thus, the total compliance burden is estimated to be approximately 456 burden-hours per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information at the following Web site: *http://www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21734 Filed 9–11–14; 8:45 am]

BILLING CODE 8011–01–P

[1] Form X–17A–5 is the Financial and Operational Combined Uniform Single Report (''FOCUS Report''), which is used by broker-dealers to provide certain required information to the Commission.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17a–7; SEC File No. 270–238, OMB Control No. 3235–0214

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information described below.

Rule 17a–7 (17 CFR 270.17a–7) (the ''rule'') under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Act'') is entitled ''Exemption of certain purchase or sale transactions

between an investment company and certain affiliated persons thereof.'' It provides an exemption from section 17(a) of the Act for purchases and sales of securities between registered investment companies (''funds''), that are affiliated persons (''first-tier affiliates'') or affiliated persons of affiliated persons (''second-tier affiliates''), or between a fund and a first- or second-tier affiliate other than another fund, when the affiliation arises solely because of a common investment adviser, director, or officer. Rule 17a–7 requires funds to keep various records in connection with purchase or sale transactions effected in reliance on the rule. The rule requires the fund's board of directors to establish procedures reasonably designed to ensure that the rule's conditions have been satisfied. The board is also required to determine, at least on a quarterly basis, that all affiliated transactions effected during the preceding quarter in reliance on the rule were made in compliance with these established procedures. If a fund enters into a purchase or sale transaction with an affiliated person, the rule requires the fund to compile and maintain written records of the transaction.[1] The Commission's examination staff uses these records to evaluate for compliance with the rule.

While most funds do not commonly engage in transactions covered by rule 17a–7, the Commission staff estimates that nearly all funds have adopted procedures for complying with the rule.[2] Of the approximately 3,382 currently active funds, the staff estimates that virtually all have already adopted procedures for compliance with rule 17a–7. This is a one-time burden, and the staff therefore does not estimate an ongoing burden related to the policies and procedures requirement of the rule for funds.[3] The staff estimates that there are approximately 140 new funds that register each year, and that each of these funds adopts the relevant policies and procedures. The staff estimates that it takes approximately 4 hours to develop and adopt these policies and procedures. Therefore, the total annual burden related to developing and adopting these policies and procedures would be approximately 560 hours.[4]

Of the 3,382 existing funds, the staff assumes that approximately 25%, (or 846) enter into transactions affected by rule 17a–7 each year (either by the fund directly or through one of the fund's series), and that the same percentage (25%, or 35 funds) of the estimated 140 funds that newly register each year will also enter into these transactions, for a total of 881[5] companies that are affected by the recordkeeping requirements of rule 17a–7. These funds must keep records of each of these transactions, and the board of directors must quarterly determine that all relevant transactions were made in compliance with the company's policies and procedures. The rule generally imposes a minimal burden of collecting and storing records already generated for other purposes.[6] The staff estimates that the burden related to making these records and for the board to review all transactions would be 3 hours annually for each respondent, (2 hours spent by compliance attorneys and 1 hour spent by the board of directors)[7] or 2,643 total hours each year.[8]

Based on these estimates, the staff estimates the combined total annual burden hours associated with rule 17a–7 is 3,203 hours.[9] The staff also estimates that there are approximately 881 respondents and 7,048 total responses.[10]

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. The collection of information required by rule 17a–7 is necessary to obtain the benefits of the rule. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21733 Filed 9–11–14; 8:45 am]

BILLING CODE 8011–01–P

[1] The written records are required to set forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, and the information or materials upon which the board of directors' determination that the transaction was in compliance with the procedures was made.

[2] Unless stated otherwise, these estimates are based on conversations with the examination and inspections staff of the Commission and fund representatives.

[3] Based on our reviews and conversations with fund representatives, we understand that funds rarely, if ever, need to make changes to these policies and procedures once adopted, and therefore we do not estimate a paperwork burden for such updates.

[4] This estimate is based on the following calculations: (4 hours × 140 new funds = 560 hours).

[5] This estimate is based on the following calculation: (846 + 35 = 881).

[6] Commission staff believes that rule 17a–7 does not impose any costs associated with record preservation in addition to the costs that funds already incur to comply with the record preservation requirements of rule 31a–2 under the Act. Rule 31a–2 requires companies to preserve certain records for specified periods of time.

[7] The staff estimates that funds that rely on rule 17a–7 annually enter into an average of 8 rule 17a–7 transactions each year. The staff estimates that the compliance attorneys of the companies spend approximately 15 minutes per transaction on this recordkeeping, and the board of directors spends a total of 1 hour annually in determining that all transactions made that year were done in compliance with the company's policies and procedures.

[8] This estimate is based on the following calculation: (3 hours × 881 companies = 2,643 hours).

[9] This estimate is based on the following calculation: (560 hours + 2,643 hours = 3,203 total hours).

[10] This estimate is based on the following calculations: 881 funds that engage in rule 17a–7 transactions × 8 transactions per year = 7,048.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

Extension:

Rule 15g–9, SEC File No. 270–325, OMB Control No. 3235–0385

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Section 15(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Exchange Act'') authorizes the Commission to promulgate rules that prescribe means reasonably designed to prevent fraudulent, deceptive, or manipulative practices in connection with over-the-counter (''OTC'') securities transactions.

Pursuant to this authority, the Commission in 1989 adopted Rule 15a–6, which was subsequently redesignated as Rule 15g–9, 17 CFR 240.15g–9 (the ''Rule''). The Rule requires broker-dealers to produce a written suitability determination for, and to obtain a written customer agreement to, certain recommended transactions in penny stocks that are not registered on a national securities exchange, and whose issuers do not meet certain minimum financial standards. The Rule is intended to prevent the indiscriminate use by broker-dealers of fraudulent, high pressure telephone sales campaigns to sell penny stocks to unsophisticated customers.

The Commission staff estimates that there are approximately 221 broker-dealers subject to the Rule. The burden of the Rule on a respondent varies widely depending on the frequency with which new customers are solicited. On the average for all respondents, the staff has estimated that respondents process three new customers per week, or approximately 156 new customer suitability determinations per year. We also estimate that a broker-dealer would expend approximately one-half hour per new customer in obtaining, reviewing, and processing (including transmitting to the customer) the information required by Rule 15g–9, and each respondent would consequently spend 78 hours annually (156 customers × .5 hours) obtaining the information required in the rule. We determined, based on the estimate of 221 broker-dealer respondents, that the current annual burden of Rule 15g–9 is 17,238 hours (221 respondents × 78 hours).

The broker-dealer must keep the written suitability determination and customer agreement required by the Rule for at least three years. Completing the suitability determination and obtaining the customer agreement in writing is mandatory for broker-dealers who effect transactions in penny stocks and do not qualify for an exemption, but does not involve the collection of confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov*. Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 by sending an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21732 Filed 9–11–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services 100 F Street NE., Washington, DC 20549–2736

Extension:

Form N–PX; SEC File No. 270–524, OMB Control No. 3235–0582

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form N–PX (17 CFR 274.129) under the Investment Company Act of 1940, Annual Report of Proxy Voting Record.'' Rule 30b1–4 (17 CFR 270.30b1–4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) requires every registered management investment company, other than a small business investment company registered on Form N–5 (''Funds''), to file Form N–PX not later than August 31 of each year. Funds use Form N–PX to file annual reports with the Commission containing their complete proxy voting record for the most recent twelve-month period ended June 30.

The Commission estimates that there are approximately 2,500 Funds registered with the Commission, representing approximately 10,000 Fund portfolios, which are required to file Form N–PX.[1] The 10,000 portfolios are comprised of 6,200 portfolios holding equity securities and 3,800 portfolios holding no equity securities. The staff estimates that portfolios holding no equity securities require approximately a 0.17 hour burden per response and those holding equity securities require 7.2 hours per response. The overall estimated annual burden is therefore approximately 45,300 hours ((6,200 responses × 7.2 hours per response for equity holding portfolios) + (3,800 responses × 0.17 hours per response for non-equity holding portfolios)). Based on the estimated wage rate, the total cost to the industry of the hour burden for complying with Form N–PX would be approximately $14.5 million.

The Commission also estimates that portfolios holding equity securities will bear an external cost burden of $1,000 per portfolio to prepare and update Form N–PX. Based on this estimate, the Commission estimates that the total annualized cost burden for Form N–PX is $6.2 million (6,200 responses × $1,000 per response = $6,200,000).

The collection of information under Form N–PX is mandatory. The information provided under the form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov*. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21736 Filed 9–11–14; 8:45 am]

BILLING CODE 8011–01–P

[1] The estimate of 2,500 Funds is based on the number of management investment companies currently registered with the Commission. We estimate, based on data from the Investment Company Institute and other sources, that there are approximately 5,700 Fund portfolios that invest primarily in equity securities, 500 ''hybrid'' or bond portfolios that may hold some equity securities, 3,200 bond Funds that hold no equity securities, and 600 money market Funds, for a total of 10,000 portfolios required to file Form N–PX.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73017; File No. SR–CBOE–2014–062]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Adopt Extended Trading Hours

September 8, 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 August 26, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to adopt extended trading hours. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, transactions in options on individual stocks may be made on the Exchange during the normal hours for business established by the exchanges currently trading the stocks underlying CBOE options,[3] which is currently 8:30 a.m. through 3 p.m. Chicago time.[4] Additionally, transactions in index options may be effected on the Exchange between 8:30 a.m. and 3 p.m. or 3:15 p.m.[5] (8:30 a.m. through 3 p.m. or 3:15 p.m., as applicable, will be referred to as ''Regular Trading Hours''). Regular Trading Hours are consistent with the regular trading hours of the other U.S. options exchanges, unlike many U.S. stock and futures exchanges, which allow for trading in some of their listed products for various periods of time outside of Regular Trading Hours.[6] CBOE Futures Exchange LLC (''CFE''), a futures exchange owned by CBOE's parent company CBOE Holdings, Inc., currently makes CBOE Volatility Index® (''VIX'') futures available for trading nearly 24 hours a day, five days a week.[7]

Securities trading is a global industry, and investors located outside of the United States generally operate during hours outside of Regular Trading Hours. The Exchange believes there is global demand from investors for options on the S&P 500 Index (''SPX'') and VIX, two of CBOE's exclusively listed options,[8] as alternatives for hedging and other investment purposes, particularly as a complementary investment tool to VIX futures. However, given that SPX and VIX options trade during Regular Trading Hours only, it is difficult for non-U.S. investors to take advantage of trading in these options. It is also difficult for U.S. investors that trade in non-U.S. markets to use these products as part of their global investment strategies. To meet this demand, and to keep pace with the continuing internationalization of securities markets, the Exchange proposes to offer trading in these two exclusively listed options during extended trading hours from 2 a.m. to 8:15 a.m. Monday through Friday (''Extended Trading Hours''). These extended hours will allow market participants to engage in trading these options in conjunction with trading VIX futures on CFE during these hours.

Extended Trading Hours will be a separate trading session from Regular Trading Hours, and there will be no carry over from one trading session to the other and no interaction between Extended Trading Hours and Regular Trading Hours. Additionally, the Extended Trading Hours will operate using separate Exchange servers and hardware from those used during Regular Trading Hours. To reflect this separation, the proposed rule change adds definitions of each trading session. Proposed Rule 1.1(qqq) defines ''Regular Trading Hours'' as the hours during which transactions in options may be made on the Exchange as set forth in Rule 6.1 (which hours are from 8:30 a.m. to either 3 p.m. or 3:15 p.m. Chicago time, as set forth above).[9] Proposed Rule 1.1(rrr) defines ''Extended Trading Hours'' as the hours outside of Regular Trading Hours during which the Exchange may be open for trading as set forth in Rule 6.1. These definitions also indicate that each may be referred to as a trading session throughout the Rules. While most of the Exchange rules apply to trading during both trading sessions, certain differences will apply to Extended Trading Hours as further described below. Having a separate definition for each trading session allows the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 6.1, Interpretation and Policy .01.

[4] All times are Chicago time unless otherwise noted.

[5] Rule 24.6.

[6] *See, e.g.,* NASDAQ Stock Market LLC Rule 4617 (regular trading hours from 9:30 a.m. until 4 p.m. Eastern time and extended trading hours from 4 a.m. until 9:30 a.m. and 4 p.m. to 8 p.m. Eastern time); and New York Stock Exchange LLC Series 900 (providing for an off-hours trading facility to operate outside of the regular 9:30 a.m. to 4 p.m. Eastern time trading session); *see also, e.g.,* Chicago Board of Trade Extended Trading Hours for Grain, Oilseeds and Ethanol—Frequently Asked Questions (indicating that certain agricultural commodity products are available for electronic trading 21 hours a day on the CME Globex trading platform); and IntercontinentalExchange, Inc. Regular Trading & Support Hours (indicating that many of its listed products are available for trading for periods of time outside of Regular Trading Hours, including overnight sessions). CBOE Stock Exchange, LLC (''CBSX''), a stock trading facility of CBOE, also has a rule providing for Extended Trading hours (from 7:30 to 8:30 a.m. and 3 to 3:45 p.m.). *See* Rule 51.2(a) (the Exchange notes that CBSX ceased trading operations on April 30, 2014).

[7] Specifically, the trading week for VIX futures begins on Sunday at 5 p.m. and ends on Friday at 3:15 p.m. CFE is closed for trading on Monday through Thursday for 15 minutes between 3:15 p.m. and 3:30 p.m., and trading for the new business day will begin at 3:30 p.m. on Monday through Thursday. CFE closes at 3:15 p.m. on Friday and remains closed until 5 p.m. on Sunday.

[8] An ''exclusively listed option'' is an option that trades exclusively on an exchange because the exchange has an exclusive license to list and trade the option or has the proprietary rights in the interest underlying the option. An exclusively listed option is different than a ''singly listed option,'' which is an option that is not an ''exclusively listed option'' but that is listed by one exchange and not by any other national securities exchange.

[9] Rule 6.1, Interpretation and Policy .01 currently states that the Board of Directors has resolved that, except under unusual conditions as may be determined by the Board or its designee, hours during which transactions in options on individual stocks may be made on the Exchange shall correspond to the normal hours for business established by the exchanges currently trading the stock underlying CBOE options. The proposed rule change makes this paragraph (a) and indicates such hours will be Regular Trading Hours.

Exchange Rules to reflect these differences and the separation of the trading sessions.

Rule 6.1 states that the Exchange's Board of Directors will determine the days the Exchange will be open for business and the hours of such days during which transactions may be made on the Exchange. The proposed rule change deletes the definition of business days currently included in Rule 6.1 (which is being moved to proposed Rule 1.1(sss) as discussed below) and adds that the Board of Directors will determine both Regular Trading Hours and Extended Trading Hours. Proposed Rule 6.1, Interpretation and Policy .01(b) provides that, similar to Regular Trading Hours, the Board of Directors has resolved that, except under unusual conditions as may be determined by the Board or its designee, Extended Trading Hours are from 2 a.m. to 8:15 a.m. Chicago time on Monday through Friday.[10] The beginning of Extended Trading Hours coincides with the opening of European trading markets, which is consistent with one of the primary purposes of providing Extended Trading Hours, which is to provide additional investment opportunities for investors located outside of the United States. The Exchange may determine whether to operate during Extended Trading Hours; [11] if it does, then transactions in options designated as eligible for trading during that trading session (as further described below) may be made on the Exchange.

The proposed rule change also adds Rule 1.1(sss) to provide that a ''business day'' or ''trading day'' is a day on which the Exchange is open for trading during Regular Trading Hours. A business day or trading day will include the Regular Trading Hours and Extended Trading Hours that occur on that day. If the Exchange is not open for Regular Trading Hours on a day (for example, because it is an Exchange holiday), then it will not be open for Extended Trading Hours on that day.

Related to the separation of the trading sessions, the Book [12] used during Regular Trading Hours is not connected to the Book used during Extended Trading Hours. Therefore, orders and quotes in the Regular Trading Hours Book will not be displayed in the Extended Trading Hours Book, and vice versa. Additionally, orders and quotes submitted during Regular Trading Hours will not trade with orders and quotes submitted during Extended Trading Hours.[13]

The Exchange believes having separate trading sessions and using a separate book for each trading session is appropriate given that, while most rules apply in the same manner to both trading sessions, some rules differ in how they apply to each session and other rules do not apply to both trading sessions (as further discussed below). Additionally, as further discussed below, the Exchange expects there to be reduced liquidity, higher volatility and wider markets during Extended Trading Hours, and investors who submit orders or quotes during Regular Trading Hours may not want their orders or quotes to trade during Extended Trading Hours given those trading conditions.

The proposed rule change adds Rule 6.1A, which sets forth the rules applicable to trading during Extended Trading Hours (and identifies when trading during Extended Trading Hours differs from trading during Regular Trading Hours). The Exchange believes it will benefit investors to have a primary description of how Extended Trading Hours differs from Regular Trading Hours contained in a single place within the rules.

Specifically, proposed Rule 6.1A states the following:

- *Applicability of Rules:* Proposed paragraph (a) provides that all Exchange Rules will apply to trading during Extended Trading Hours except as set forth in proposed Rule 6.1A and except for the Rules that by their express terms are inapplicable during Extended Trading Hours or where the context otherwise requires. For example, the proposed rule change amends Rule 24.3 to provide that rule applies only during [sic] Regular Trading Hours.[14] Additionally, because the proposed rule change provides that all trading during Extended Trading Hours will be electronic and on the Hybrid System, all rules related to open outcry trading and the Hybrid 3.0 System will be inapplicable during Extended Trading Hours.
- *Electronic Trading Only:* Proposed paragraph (b) provides that all trading during Extended Trading Hours will be electronic on the Hybrid Trading System only (excluding the Hybrid 3.0 Platform) and that there will be no open outcry trading on the floor during Extended Trading Hours. Because various Rules accommodate open outcry and electronic trading by routing orders to PAR workstations,[15] the order entry firm's booth or otherwise for manual handling under certain circumstances,[16] the proposed rule change notes that if the Rules provide that an order should route to PAR, the System will return the order to the Trading Permit Holders during Extended Trading Hours.
- *Eligibility:* Proposed paragraph (c) provides that the Exchange may designate as eligible for trading during Extended Trading Hours any exclusively listed option that the Exchange has designated for trading pursuant to Rules 24.2 and 24.9 (see discussion below for additional details).[17] As indicated above, the Exchange has approved SPX [18] and VIX

[10] The proposed rule change makes conforming changes to Rule 24.6 (including Interpretation and Policy .01) regarding the days and hours of business with respect to index options.

[11] The Exchange believes it is appropriate to retain flexibility to determine whether to operate during Extended Trading Hours so that it can complete all system work and other preparations prior to implementing Extended Trading Hours and so that it can evaluate trading activity during Extended Trading Hours once implemented and determine whether to continue or modify the trading session (subject to applicable rule filings).

[12] The proposed rule change adds Rule 1.1(ppp) to define the term ''Book'' as the electronic book of buy and sell orders and quotes maintained by the Hybrid Trading System. ''Hybrid Trading System'' refers to the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes. *See* Rule 1.1(aaa). The Book is also referred to as book, electronic book and EBook throughout the Rules, and the term ''Book'' as used in the Rules will refer to the Book used during Regular Trading Hours or Extended Trading Hours, as applicable.

[13] As discussed further below, except as set forth in proposed Rule 6.1A and except for rules that by their terms are inapplicable during Extended Trading Hours or where the context otherwise requires, all Exchange rules apply to trading during Extended Trading Hours, including the business conduct rules in Chapter IV and rules related to doing business with the public in Chapter IX. Additionally, a broker-dealer's due diligence and best execution obligations apply during Extended Trading Hours.

[14] The proposed rule change makes conforming changes to Rules 6.1, Interpretations and Policies .03 and .05, 6.2, Interpretations and Policies .01–.03 and .05, 6.2A and 6.2B, Interpretations and Policies .01 and .08 to indicate provisions of those Rules that will not apply during Extended Trading Hours and will thus apply during Regular Trading Hours only.

[15] PAR workstations are located in the trading crowds on the trading floor to allow manual handling of orders by Trading Permit Holders and Exchange PAR Officials. Because there will be no trading floor during Extended Trading Hours, PAR workstations will also not be available.

[16] For example, Rule 6.13(b)(v) states that if an order does not automatically execute because it does not satisfy the price check parameters set for the applicable class pursuant to that rule, then the order may route to PAR or, at the order entry firm's discretion, to the order entry firm's booth; if the order is not eligible to route to PAR, then it will be cancelled. Pursuant to proposed Rule 6.1A(b), during Extended Trading Hours, the system would return this order to the Trading Permit Holder.

[17] The proposed rule change makes a conforming change to Rule 24.6 (including Interpretation and Policy .01) (regarding days and hours of business for index options transactions) to indicate that the Exchange may authorize transactions in index options identified in Rule 6.1A during Extended Trading Hours.

[18] The Exchange notes that SPX currently trades on the Hybrid 3.0 trading platform during Regular

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for trading on the Exchange during Extended Trading Hours. Any series in these classes that are expected to be open for trading during Regular Trading Hours will be open for trading during Extended Trading Hours on that same trading day (subject to Rules 6.2B and 24.13, Interpretation and Policy .03, which set forth procedures for the opening of trading). Flexible Exchange Options (''FLEX Options''), which trade pursuant to Chapters XXIVA and XXIVB, will not be eligible for trading during Extended Trading Hours.[19]

• *Participants:* Proposed paragraph (d) provides that Trading Permit Holders must obtain an Extended Trading Hours Trading Permit to trade during Extended Trading Hours pursuant to the process set forth in Rule 3.1.[20] As is true during Regular Trading Hours, only authorized Trading Permit Holders (including their nominees) and their associated persons may access the Hybrid Trading System (this would apply to any non-U.S. based Trading Permit Holders).[21] The Exchange notes that while there is a distinction between Trading Permits with respect to trading sessions, there is no distinction for Trading Permit Holder status with respect to trading sessions. In other words, a current Trading Permit Holder does not need to reapply to become an Extended Trading Hours Trading Permit Holder. Trading Permit Holders may trade during Regular Trading Hours and/or Extended Trading Hours as long as they hold a Trading Permit(s) for the applicable trading session.[22] Because Regular Trading Hours and Extended Trading Hours are separate, the Exchange believes it is appropriate to have separate Trading Permits for the trading sessions.

• *Market-Makers:* Proposed paragraph (e) provides that a Market-Maker's appointment during Regular Trading Hours does not apply during Extended Trading Hours.[23] This is consistent with the separation of the two trading sessions. Additionally, because Extended Trading Hours will occur during overnight hours in Chicago (and trading levels are expected to be lower than those during Regular Trading Hours), the Exchange does not believe that Market-Maker Regular Trading Hours appointments should apply during Extended Trading Hours (and thus impose obligations on Market-Makers during that trading session who may not want to trade during that trading session).

Market-Makers may request Extended Trading Hours appointments in accordance with Rule 8.3 (and proposed subparagraph (e)(i)). Similar to Regular Trading Hours, proposed Rule 6.1A(e)(i) provides that Market-Makers can create a Virtual Trading Crowd appointment during Extended Trading Hours, which confers the right to quote electronically during Extended Trading Hours in the appropriate number of classes selected from the Extended Trading Hours tier and related appointment costs. For Extended Trading Hours, the appointment cost for each of VIX and SPX options will be 0.5. Each Extended Trading Hours Trading Permit will have an appointment credit of 1.0 (the same as a Regular Trading Hours Trading Permit), so at the launch of Extended Trading Hours, a Market-Maker will only need to hold one Extended Trading Hours Trading Permit if it wants to quote in both SPX and VIX during Extended Trading Hours.[24]

Rule 8.7(d)(ii) requires Market-Makers that trade more than 20% of contract volume electronically in an appointed class to (a) comply with bid/ask differential requirements determined by the Exchange on a class-by-class basis, (b) maintain continuous electronic quotes in 60% of the non-adjusted option series of in each appointed class[25] with a time to expiration of less than nine months for 90% of the time when the Market-Maker is quoting in a class, with initial quote size for the minimum number of contracts determined by the Exchange on a class-by-class basis (which must be at least one contract) and (c) provide a two-sided market in response to a request for quote in the crowd complying with bid/ask differential requirements. Rule 1.1(ccc) provides that a Maker will be deemed to have provided continuous electronic quotes if it provides electronic two-sided quotes for 90% of the time that the Market-Maker is required to provide electronic quotes in an appointed class on a given trading day.

Trading Hours (weekly SPX series trade on the Hybrid trading platform during Regular Trading Hours). Pursuant to proposed Rule 6.1A(b), SPX will trade on the Hybrid trading platform (and not the Hybrid 3.0 trading platform) and thus pursuant to rules applicable to the Hybrid trading platform (rather than the Hybrid 3.0 trading platform) during Extended Trading Hours.

[19] Rules 24A.4(b) and (c) and 24B.4(b) and (c) provide the Exchange with the authority to approve and open for trading any FLEX Options series on any index or security that is eligible for non-FLEX Options trading under Rules 24.2 or 5.3, respectively. Therefore, not listing FLEX Options during Extended Trading Hours is consistent with the Exchange's current authority.

[20] The proposed rule change amends Rule 3.1(a)(iv) to provide that (a) the Exchange will also have the authority to issue different types of trading permits to trade during Regular Trading Hours or Extended Trading Hours and (b) Trading Permits for one trading session do not allow trading during another trading session. The Exchange intends to issue Regular Trading Hours Trading Permits and Extended Trading Hours Trading Permits. A Regular Trading Hours Trading Permit allows the holder to trade during Regular Trading Hours but not Extended Trading Hours, and an Extended Trading Hours Trading Permit allows the holder to trade during Extended Trading Hours but not Regular Trading Hours. The Exchange notes that Rule 3.1(a)(vi) provides the Exchange with authority to limit or reduce the number of any type of Trading Permit it can issue. Thus, under that rule, the Exchange will be able to limit the number of Extended Trading Hours Trading Permits it issues, which may be different than the limit of Regular Trading Hours Trading Permits (a different Trading Permit type) it issues. The Exchange intends to set the initial limit of Extended Trading Hours Trading Permits at 300 Market-Maker Trading Permits and 150 Electronic Access Trading Permits (compared to 900 Market-Maker Trading Permits, 150 Floor Broker Trading Permits and 150 Electronic Access Trading Permits for Regular Trading Hours), as set forth in Regulatory Circular RG14–092 (dated June 13, 2014). The Exchange expects fewer Market-Makers (due to fewer products traded) during Extended Trading Hours, and Floor Broker Trading Permits are unnecessary during Extended Trading Hours (due to no open outcry trading).

[21] *See* Rule 6.23A(d). The Exchange's Web site provides the process pursuant to which Trading Permit Holders and their associated persons may receive authorization from the Exchange to access the Hybrid Trading System. Additionally, pursuant to Rule 3.8(a), all Trading Permit Holder organizations must designate an individual nominee to represent the organization with respect to each of the organization's Trading Permits. Among other things, a nominee must be approved to be a Trading Permit Holder. Thus, a nominee under Rule 3.8 would be able to access the Exchange as a Trading Permit Holder and on behalf of the applicable Trading Permit Holder organization in accordance with the rules. This is consistent with Rule 6.1, Interpretation and Policy .05, which provides that the term ''Trading Permit Holder'' as defined in the Exchange's bylaws and used in the Exchange's rules includes a nominee of a Trading Permit Holder organization unless the context otherwise requires.

[22] The Commission recently approved changes to Rule 6.21 related to give ups of Clearing Trading Permit Holders that have not yet been implemented. *See* Securities Exchange Act Release No. 34–72668 (July 24, 2014), 79 FR 44229 (July 30, 2014) (SR–CBOE–2014–048). Consistent with the changes described above regarding Trading Permits for each trading session, the proposed rule change amends the recently approved rule text in Rule 6.21 to provide that the Clearing Trading Permit Holder that is named as the give up for a transaction must hold a Trading Permit for the trading session in which the transaction occurred. A Clearing Trading Permit Holder must be operating in a trading session to be able to clear transactions during that trading session, and thus must hold a Trading Permit for that trading session.

[23] The proposed rule change makes conforming changes to Rule 8.3.

[24] The proposed rule change makes conforming changes to Rule 8.3(c) to indicate that appointments pursuant to that provision (including the appointment costs) apply during Regular Trading Hours only and that the quarterly rebalancing of appointment costs excludes Extended Trading Hours tier classes.

[25] The Exchange recently amended this provision to, among other things, apply to all appointed classes collectively, which change is effective but not yet operative. Securities Exchange Act Release No. 34–72742 (August 1, 2014), 79 FR 46282 (August 7, 2014) (SR–CBOE–2014–059).

Proposed paragraph (e)(ii) provides that, notwithstanding the 20% contract volume requirement in Rule 8.7(d)(ii), Market-Makers with Extended Trading Hours appointments must comply with the quoting obligations set forth in Rule 8.7(d)(ii) (except during Extended Trading Hours the Exchange may determine to have no bid/ask differential requirements as set forth in subparagraph (A) and there will be no open outcry quoting obligation as set forth in subparagraph (C)) [26] as well as other obligations set forth in Rule 8.7. The Exchange notes that Market-Makers with appointments for Extended Trading Hours must still otherwise comply with applicable Exchange Rules that apply during Extended Trading Hours. Because of the expected lower liquidity, wider spreads and higher volatility during Extended Trading Hours, the Exchange believes it is appropriate to have the ability to not impose bid/ask differential requirements on Market-Makers during Extended Trading Hours in order to allow Market-Makers to quote under those conditions.[27] The proposed rule change allows the Exchange to impose bid/ask differential requirements during Extended Trading Hours (which it would announce by Regulatory Circular) if it thinks such an obligation would be appropriate. Additionally, because there is no open outcry trading during Extended Trading Hours, the Exchange believes it is appropriate to not apply the open outcry quoting obligation to Market-Makers during Extended Trading Hours.

Additionally, Rule 8.7(d) indicates that the quoting obligations in subparagraph (ii) do not apply for the first 90 days after a class begins trading and that a Market-Maker must satisfy the quoting obligations in subparagraph (ii) for a class beginning the calendar quarter following a calendar quarter in which it transacted more than 20% contract volume electronically in that class. Proposed paragraph (e)(ii) provides that, notwithstanding those two provisions, a Market-Maker with an Extended Trading Hours appointment in a class must immediately comply with the quoting obligations in Rule 8.7(d)(ii) during Extended Trading Hours. Similar to the reasoning above, because all Extended Trading Hours trading will be electronic only, the Exchange does not believe the 90-day delay period or calendar quarter delay is necessary for Extended Trading Hours.

Because appointments for each trading session are separate, the proposed rule change amends Rule 8.7(d)(iii) to provide that quoting obligations of Market-Makers apply per trading session. In other words, if a Market-Maker has an appointment in a class during Regular Trading Hours and Extended Trading Hours, the Exchange will determine compliance with the continuous electronic quoting requirement during Regular Trading Hours separately from compliance with the continuous electronic quoting requirement during Extended Trading Hours. Thus, a Market-Maker must quote in 60% of the non-adjusted series that have a time to expiration of less than nine months of an appointment for 90% of the time it is quoting during Regular Trading Hours (each trading day) and in 60% of the non-adjusted series that have a time to expiration of less than nine months of an appointment for 90% of the time it is quoting during Extended Trading Hours (each trading day).[28]

Pursuant to proposed paragraph (e)(iii)(A), the Exchange may approve one or more Market-Makers to act as Lead Market-Makers (''LMMs'') in each class during Extended Trading Hours in accordance with Rule 8.15A for terms of at least one month. However, to the extent the Exchange approves Market-Makers to act as LMMs during Extended Trading Hours, proposed paragraph (e)(iii)(B) provides that LMMs must comply with the continuous quoting obligation and other obligations of Market-Makers described above but not the obligations set forth in Rule 8.15A [29] during Extended Trading Hours for their allocated classes. It further provides that LMMs do not receive a participation entitlement as set forth in Rules 6.45B and 8.15B during Extended Trading Hours.

Pursuant to proposed paragraph (e)(iii)(C), if an LMM (1) provides continuous electronic quotes in at least the lesser of 99% of the non-adjusted series or 100% of the non-adjusted series minus one call-put pair in an Extended Trading Hours allocated class (excluding intra-day add-on series on the day during which such series are added for trading) during Extended Trading Hours in a given month and (2) ensures an opening of the same percentage of series by 2:05 a.m. for at least 90% of the trading days during Extended Trading Hours in a given month (which standards are substantially similar to LMM obligations during Regular Trading Hours except as discussed below), the LMM will receive a rebate for that month in an amount set forth in the Exchange Fees Schedule.[30] Notwithstanding Rule 1.1(ccc), for purposes of this heightened continuous quoting standard, an LMM will be deemed to have provided continuous electronic quotes during Extended Trading Hours if the LMM provides electronic two-sided quotes for 90% of the time in Extended Trading Hours in a given month.[31]

The Exchange believes it is more fitting to implement an incentive program with a rebate during Extended Trading Hours, rather than the obligation/benefit structure that exists during Regular Trading Hours. LMMs will not be obligated to satisfy

[26] The proposed rule change makes a conforming change to Rule 8.7(d) to indicate that Rule 8.7(d)(i) applies during Regular Trading Hours only. Additionally, the proposed rule change amends Rule 8.7(d) to state that the 20% threshold will be based on a Market-Maker's electronic trading volume during Regular Trading Hours only. Because only electronic trading is permitted during Extended Trading Hours, the Exchange believes it is appropriate to exclude that trading from the determination as to which set of obligations applies to a Market-Maker's appointment. For example, if a Market-Maker typically conducts most of its trading in its appointments in open outcry but elects to participate in Extended Trading Hours, it should not have to satisfy the electronic quoting obligations during Regular Trading Hours because its Extended Trading Hours trading puts the Market-Maker over the 20% threshold. It would, however, need to satisfy the continuous electronic quoting obligations during Extended Trading Hours.

[27] The Exchange notes that other exchanges with substantially similar continuous quoting obligations do not impose bid/ask differential requirements on Market-Makers during Regular Trading Hours (and also do not impose open outcry obligations). *See, e.g.,* C2 Options Exchange, Incorporated (C2) Rule 8.5.

[28] The proposed rule change makes a conforming change to Rule 1.1(ccc), which is the definition of continuous electronic quotes, to state that the percentage of time a Market-Maker must provide continuous electronic quotes is determined in the applicable trading session. Pursuant to Rule 8.7, Interpretation and Policy .01, the continuous electronic quoting obligation does not apply to intra-day add-on series on the day during which such series are added for trading.

[29] Rule 8.15A (and Rule 1.1(ccc)) requires LMMs to provide continuous electronic quotes in at least the lesser of 99% of the non-adjusted series or 100% of the non-adjusted series minus one call-put pair within their appointed classes, with the term call-put pair referring to one call and one put that cover the same underlying instrument and have the same expiration date and exercise price, for 90% of the time.

[30] The Exchange intends to submit a separate rule filing to adopt all fees applicable to Extended Trading Hours, including the amount of the rebate. As set forth in Regulatory Circular RG14–092, LMMs in each class that satisfy the heightened standard in a month are expected to receive a pro-rata share of a ''compensation pool'' equal to $25,000 times the number of LMMs in that class.

[31] If a technical failure or limitation of a system of the Exchange prevents the LMM from maintaining, or prevents the LMM from communicating to the Exchange, timely and accurate electronic quotes in a class, the duration of such failure will not be considered in determining whether the LMM has satisfied the 90% quoting standard with respect to that class. The Exchange may consider other exceptions to this continuous electronic quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances.

heightened continuous quoting and opening quoting standards during Extended Trading Hours. The proposed rule change does not provide for LMMs to receive a benefit in exchange for satisfying an obligation. Instead, the proposed rule change creates an incentive program in which LMMs must satisfy a heightened standard to receive a rebate in order to encourage LMMs to provide significant liquidity during Extended Trading Hours.

The Exchange expects that Trading Permit Holders may need to undertake significant expenses to be able to quote at a significantly heightened standard during Extended Trading Hours, such as to perform system work and add personnel. The Exchange believes providing a rebate will encourage Trading Permit Holders to not only apply to be LMMs during Extended Trading Hours but incentive them to increase liquidity during Extended Trading Hours, as the rebate could offset the costs that accompany providing quotes at the heightened standard. The Exchange does not expect that the Regular Trading Hours obligation/benefit structure would provide similar incentive during Extended Trading Hours. The Exchange expects lower trading liquidity and trading levels during Extended Trading Hours, and thus fewer opportunities for an LMM to receive a participation entitlement. Without the possibility of receiving a participation entitlement on a sufficient volume of trades, there would not be sufficient incentive for Trading Permit Holders to undertake an obligation to quote at heightened levels, which could result in even lower levels of liquidity. Therefore, a rebate is more appropriate than imposing an obligation to receive a participation entitlement.

The participation entitlement received by LMMs during Regular Trading Hours is a form of financial benefit provided in return for satisfying a heightened quoting obligation. Offering a rebate during Extended Trading Hours is merely a different type of financial benefit that may be given to LMMs during Extended Trading Hours if it achieves a heightened quoting level. While the proposed standards are similar to the Regular Trading Hours quoting obligations (as the intent of the program is to incentive quoting to add liquidity to the trading session), the structure of the program is similar to other incentive programs (pursuant to which, for example, rebates are given in exchange for achieving volume thresholds). This program is just proposing a different type of threshold and a corresponding rebate that are more suited to the expected market conditions during Extended Trading Hours. The Exchange wants to provide LMMs with the flexibility to determine whether satisfying the heightened standard makes good business sense given the trading levels and costs during Extended Trading Hours.

The Exchange believes it is appropriate and fair for LMMs to satisfy the heightened continuous quoting standard during Extended Trading Hours as part of the incentive program on a monthly basis rather than a daily basis. First, as discussed above, the Exchange expects LMMs to have fewer employees available during Extended Trading Hours than Regular Trading Hours to address any systems issues that may arise (and thus such issues may take longer to correct), which will make satisfaction of this heightened standard more difficult. The Exchange also expects Trading Permit Holders to have additional costs during Extended Trading Hours to be able to quote at these heightened levels during Extended Trading Hours. Thus, the Exchange believes a monthly quoting standard, slightly modified from the daily Regular Trading Hours quoting obligation, will offset such additional burdens and incentive more Trading Permit Holders to be LMMs during Extended Trading Hours, which will increase liquidity during the trading session and ultimately benefit investors. The heightened standard is still challenging to achieve to justify the provision of a rebate. The Exchange believes fewer or no Trading Permit Holders will elect to function as LMMs and quote at the heightened standard during Extended Trading Hours if the standard is not applied monthly, because the benefits received (the rebate) would not offset the burdens to quote at such levels during Extended Trading Hours, particularly if those quotes will result in fewer trades during the trading session. The Exchange believes liquidity during Extended Trading Hours will benefit more from having more LMMs quoting at a heightened monthly standard than fewer (or no) LMMs quoting at a heightened daily standard.

Second, the Exchange does not believe a monthly standard would result in a material reduction in liquidity than a daily standard. An LMM that quotes 99% of the non-adjusted series (or 100% minus one call-put pair) for less than 90% of the time during one Extended Trading Hours session will have to quote more during another Extended Trading Hours session (or sessions) in the same calendar month to achieve the heightened standard and receive a rebate. To the extent the applicability of a monthly standard allows an LMM to quote a lower percentage in a class during one session, it essentially requires the LMM to quote a higher percentage in that class during another session in that month if it wants to receive the rebate for that month. Ultimately, the quoting levels balance out over the month. The Exchange also notes that the LMM heightened quoting standard must be met in each class to receive a rebate for that class. The Regular Trading Hours continuous quoting obligation, while applied daily, will soon be applied collectively. Thus, the Extended Trading Hours standard will be more difficult to achieve than the Regular Trading Hours obligation in this respect once that change is implemented and offsets any reduction that may result from a monthly standard.[32]

Third, as discussed above, the LMM heightened quoting standard, unlike during Regular Trading Hours, is not an obligation for which an LMM receives an entitlement but rather an incentive program condition to be satisfied to receive a rebate. While the Regular Trading Hours quoting obligation is applied daily, a monthly standard is consistent with other incentive programs. The Exchange believes having a monthly quoting standard will encourage more Market-Makers to apply to act as LMMs during Extended Trading Hours, which will provide greater liquidity during the trading session, ultimately benefiting all market participants during Extended Trading Hours.

Similarly, the opening quoting standard is not an obligation but rather an incentive condition to be satisfied to receive a rebate. The opening quoting standard that LMMs must satisfy to receive the rebate is substantially similar to the opening quoting requirement for Regular Trading Hours.[33] For the same reasons described

[32] *See supra* note 25.

[33] The proposed rule change provides a specific timing requirement, which it believes gives clearer guidance to LMMs regarding the opening quote standard. Currently, nearly all series open for Regular Trading Hours within that time frame, and thus the Exchange believes this timeframe is appropriate and will not be unduly burdensome on LMMs. Additionally, while the Extended Trading Hours opening standard is slightly less than the Regular Trading Hours opening standard, the Exchange believes it is appropriate to provide LMMs with slight flexibility, particularly because the proposed opening quoting standard is consistent with the series and timing percentage for the continuous quoting standard. The Exchange believes that having the same percentage standard at opening and during the Extended Trading Hours allows LMMs to more efficiently quote and incentivize satisfaction of the standards by LMMs. Additionally, the Exchange believes the slight flexibility at the open may encourage quoting by LMMs. The Exchange does not believe this slight

above regarding the monthly quoting standard, the Exchange believes it is appropriate for satisfaction of the opening standard to be based on a percentage of Extended Trading Hours trading sessions during a month rather than every trading session.

The Exchange notes that if a Market-Maker is unable to regularly comply with the quoting obligation due to systems issues or for other reasons during Extended Trading Hours, the Exchange has the authority under the rules to suspend or terminate a Market-Maker's registration or appointments.[34] The Exchange also notes that while it intends initially to approve LMMs during Extended Trading Hours for one-year terms,[35] it may consider an LMM's regularity of systems issues and monthly quoting levels when deciding whether to renew a Market-Maker's application to act as an Extended Trading Hours LMM.

The proposed rule change adds Rule 6.1A(e)(iv) to provide that an order submitted during Extended Trading Hours by a Trading Permit Holder that is a Market-Maker in the class for Regular Trading Hours but not Extended Trading Hours may be eligible for Market-Maker treatment. Market-Makers may receive the benefit of different margin treatment for Market-Maker orders,[36] and the proposed rule provides that this treatment may extend to an order in a class (subject to other restrictions) submitted by a Trading Permit Holder during Extended Trading Hours, even if the Trading Permit Holder acts as a Market-Maker for that class during Regular Trading Hours but not Extended Trading Hours. However, if the rules impose any percentage limit on ''off-floor orders'' of Market-Makers in a class, then such an order will be considered an off-floor order that counts toward that percentage limit. For example, Rule 8.7, Interpretation and Policy .03 provides that if a Market-Maker receives Market-Maker treatment for off-floor orders in a calendar quarter, then the Market-Maker must execute in person (and not through orders) at least 80% of its transactions in Hybrid 3.0 classes.[37] SPX is a Hybrid 3.0 class during Regular Trading Hours but will be a Hybrid class during Extended Trading Hours. Because all Extended Trading Hours transactions are electronic (and thus ''off-floor''), the Exchange believes SPX orders that are executed during Extended Trading Hours count towards the 20% limit on a Market-Maker's transactions that may be off-floor in SPX.

- *Orders:* Proposed paragraph (f) provides that all order types that are available for electronic processing during Regular Trading Hours [38] and as otherwise determined by the Exchange [39] will be available during Extended Trading Hours except market orders, market-on-close orders, stop orders and good-til-cancelled orders. The Exchange expects reduced liquidity, higher volatility and wider spreads during Extended Trading Hours. Therefore, the Exchange believes it is appropriate to not allow market orders (and stop orders, market-on-close orders and market-if-touched orders, which can become market orders) in order to protect customers should wide price fluctuations occur due to the potential illiquid and volatile nature of the market or other factors that could impact market activity.[40] The Exchange believes that good-til-cancelled orders would likely not be used often during Extended Trading Hours given the expected reduced liquidity during those hours and potential market changes during Regular Trading Hours. As discussed above and in the following paragraph, each trading session has a separate book. The Exchange believes that it further protects investors to start each Extended Trading Hours session with an empty book, as the orders from the previous Extended Trading Hours session will have been cancelled at the end of that previous session.
- *Book:* Proposed paragraph (g) provides that the Book used during Extended Trading Hours will not be connected to the Book used during Regular Trading Hours. As discussed above, orders and quotes in the Regular Trading Hours Book will not be displayed in the Extended Trading Hours Book, and vice versa. Additionally, orders and quotes submitted during Regular Trading Hours will not trade with orders and quotes submitted during Extended Trading Hours, and vice versa. Additionally, a separate complex order book (''COB'') will also be used during Extended Trading Hours, which COB will operate during Extended Trading Hours in accordance with Rule 6.53C(c) in the same manner as the COB operates during Regular Trading Hours and not be connected to the COB used during Regular Trading Hours. Complex orders in the COB during Extended Trading Hours will execute in accordance with Rule 6.53C(c)(ii). As discussed above, the System will cancel all orders and quotes remaining on the Book and COB at the end of an Extended Trading Hours session.
- *Compliance with Rules:* Proposed paragraph (h) provides that the business conduct rules set forth in Chapter IV of the Exchange's Rules apply during Extended Trading Hours. These Rules, among other things, prohibit Trading Permit Holders from engaging in acts or practices inconsistent with just and equitable principles of trade, making any willful or material misrepresentation or omission in any application, report or other communication to the Exchange or the Options Clearing Corporation, and from effecting or inducing the purchase, sale or exercise of any security for the purpose of manipulating the price or activity of the security.[41] These Rules

reduction in the opening standard will materially impact liquidity, which is already expected to be lower during Extended Trading Hours. In fact, the Exchange believes this flexibility may increase liquidity during Extended Trading Hours. In the event a series does not open because no LMM provides opening quotes in that series, the Exchange notes that Rule 8.7(d)(iv) requires Market-Makers to submit a quote or maintain continuous quotes in a series in their appointed classes if called upon by a designated Exchange official if the official deems it necessary in the interest of maintaining a fair and orderly market.

[34] *See, e.g.,* Rules 8.2(b) and 8.3(a)(i) (subject to the Market-Makers right to a review of any such determination).

[35] Proposed Rule 6.1A(e)(iii) provides that the Exchange may appoint LMMs to a class during Extended Trading Hours for terms of at least one month (which is consistent with the provision for terms of LMMs appointed to Hybrid classes during Regular Trading Hours as set forth in Rule 8.15A(i)).

[36] *See* Rule 12.3(f).

[37] Currently, there is no similar percentage limit for VIX; however, if the Exchange rules imposed a limitation on the allowed percentage of off-floor orders for VIX Market-Makers, then Extended Trading Hours VIX Market-Maker orders would similarly count toward any applicable off-floor order percentage limit.

[38] Certain order types, such as market-if-touched orders, are available during Regular Trading Hours but not accepted by the System for electronic processing and instead are routed to PAR.

[39] The rules provide the Exchange with flexibility to determine which order types are available in general and for specific functionality. *See, e.g,* Rules 6.2B(a)(i) (permitting the Exchange to determine order types that may be entered pre-opening and participate in the opening rotation); 6.13(b)(i) (permitting the Exchange to determine eligible order types for automatic execution); 6.53 (permitting the Exchange to make order types available on a class-by-class basis and providing that certain order types may not be made available for all Exchange systems); and 6.53C(c)(i) (permitting the Exchange to determine order origin types eligible for entry into the COB) and (d)(i)(2) (permitting the Exchange to determine order types eligible for the complex order auction (''COA'')). The proposed rule change is consistent with current Exchange authority under these rules.

[40] *See* ''Report of the Working Group on Investor Protection and Education,'' Extended Hours Working Group at 2, 4 (which report recommends that limit orders be used by investors in extended trading hours until trading during that time becomes more liquid, as limit orders are the most practical method of controlling risk).

[41] Rules 4.11 and 24.4 impose position limits and Rules 4.12 and 24.5 impose exercise limits on Trading Permit Holders transactions. However, the Exchange notes that Rules 24.4 and 24.5 provide

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apply to Trading Permit Holders even without this provision; however, given the importance of these Rules, the Exchange believes that it is worthwhile to also include their applicability in proposed Rule 6.1A so that the proposed Extended Trading Hours rules are more informative and complete.

• *Exchange Determinations:* Proposed paragraph (i) provides that to the extent the Rules allow the Exchange to make a determination, such as on a class-by-class or series-by-series basis, the Exchange may make a determination for Extended Trading Hours that differs from that made for Regular Trading Hours. The Exchange will announce all determinations made under Rule 6.1A by Regulatory Circular. The Exchange maintains flexibility with respect to certain rules so that it may apply different settings and parameters to each class to address the specific characteristics of that class and its market. For example: Rules 6.45A(a) and 6.45B(a) allow the Exchange to determine electronic allocation algorithms on a class-by-class basis [42]; Rule 8.7(b)(iv), (d)(i)(A) and (d)(ii)(A) allows the Exchange to determine bid/ask differential requirements on a class-by-class basis; Rules 6.2B(e)(ii) and 6.13(b)(v) allow the Exchange to set price reasonability checks on a class-by-class basis; and Rules 6.13A(a), 6.14A(a), 6.53C(d)(i)(2), 6.74A(a)(1) and 6.74B(a)(1) allow the Exchange to activate various auctions on a class-by-class basis.[43] Because trading during Extended Trading Hours will be electronic only, and because trading during Extended Trading Hours may be different than Regular Trading Hours (such as lower trading levels, reduced liquidity and fewer participants), the Exchange believes it is appropriate to extend this flexibility to each trading session.

With respect to Rules that require determinations by the Exchange, Floor Officials or other Exchange personnel (such as trading halts, opening series, and obvious errors), the Exchange represents that it will have appropriate personnel available during Extended Trading Hours to make these determinations to the extent necessary during the trading session.

• *Disclosure:* Proposed paragraph (j) requires Trading Permit Holders to make certain disclosures to customers regarding material trading risks that exist during Extended Trading Hours. The Exchange expects overall lower levels of trading during Extended Trading Hours compared to Regular Trading Hours. While trading processes during Extended Trading Hours will be substantially similar to trading processes during Regular Trading Hours, the Exchange believes it is important for investors, particularly public customers, to be aware of any differences and risks that may result from lower trading levels and thus requires these disclosures. Proposed paragraph (j) provides that no Trading Permit Holder organization may accept an order from a customer for execution during Extended Trading Hours without disclosing to that customer that trading during Extended Trading Hours involves material trading risks, including the possibility of lower liquidity (including fewer Market-Makers quoting), higher volatility, changing prices, an exaggerated effect from news announcements, wider spreads, the absence of an updated underlying index or portfolio value or intraday indicative value and lack of regular trading in the securities underlying the index or portfolio and any other relevant risk. The proposed rule provides an example of these disclosures. The Exchange believes that requiring Trading Permit Holders to disclose these risks to non-TPH customers will facilitate informed participation in Extended Trading Hours.

The Exchange also intends to distribute to its Trading Permit Holders and make available on its Web site a Regulatory Circular regarding Extended Trading Hours that discloses, among other things: (1) That the current underlying index value may not be updated during Extended Trading Hours, (2) that lower liquidity during Extended Trading Hours may impact pricing, (3) that higher volatility during Extended Trading Hours may occur, (4) that wider spreads may occur during Extended Trading Hours, (5) the circumstances that may trigger trading halts during Extended Trading Hours, (6) required customer disclosures (as described above), and (7) suitability requirements. The Exchange believes that, with this disclosure, Extended Trading Hours are appropriate and beneficial notwithstanding the absence of a disseminated updated index value during those hours.

• *Index Values:* Proposed paragraph (k) provides that the Exchange will not report a value of an index underlying an index option trading during Extended Trading Hours because the value of the underlying index will not be recalculated during or at the close of Extended Trading Hours. The closing value of the index from the previous trading day will be available for Trading Permit Holders that trade during Extended Trading Hours. However, the Exchange does not believe it would be useful or efficient to disseminate to Trading Permit Holders the same value repeatedly at frequent intervals, as it does during Regular Trading Hours (when the index value is being updated).[44]

The differences described above are consistent with the Exchange's goal to permit trading during Extended Trading Hours for those Trading Permit Holders

that there are no position or exercise limits on SPX or VIX.

[42] Thus, the allocation algorithm and priority overlays that apply to a class during Regular Trading Hours may differ from the allocation algorithm and priority overlays that apply to that class during Extended Trading Hours. For example, the ultimate matching algorithm with customer priority and participation entitlement may apply to Class XYZ during Regular Trading Hours but price-time with no customer priority or participation entitlement may apply to Class XYZ during Extended Trading Hours. The Exchange intends to initially apply the price-time allocation algorithm to SPX and the pro-rata allocation algorithm to VIX, with no priority overlays, pursuant to Rule 6.45B(a) during Extended Trading Hours. The Exchange announced this intention in Regulatory Circular RG14–092 (dated June 13, 2014) and will announce any changes to the algorithms applied to classes during Extended Trading Hours in additional Regulatory Circulars. As discussed above, Chapter IV business conduct rules apply to Trading Permit Holders during Extended Trading Hours. This includes Rule 4.2, which among other things prohibits Trading Permit Holders from violating the Act and the rules and regulations thereunder.

[43] In order to provide orders with opportunities for price improvement during Extended Trading Hours, the Exchange intends to activate COA and the automated improvement mechanism (''AIM'') auction during Extended Trading Hours, which will operate in accordance with Rules 6.53C and 6.74A, respectively, in the same manner as they do during Regular Trading Hours (including providing customer priority for executions following the conclusion of those auctions as set forth in those rules), except with respect to AIM, the requirement that three Market-Makers must be quoting to initiate an AIM auction will not apply during Extended Trading Hours. The Exchange believes it is appropriate to exclude this requirement during Extended Trading Hours because of excepted reduced number of Market-Makers during Extended Trading Hours. AIM is a valuable price improvement mechanism, and eliminating this requirement will make more price improvement opportunities available during Extended Trading Hours, despite potentially lower participation levels.

[44] Rule 24.2(b)(10), (d)(8), (e)(7) and (f)(11) currently provides that underlying index values will be disseminated at least once every 15 seconds. This provision is superseded with respect to Extended Trading Hours by proposed Rule 6.1A(k), and thus no such dissemination will occur during Extended Trading Hours. The proposed rule change also amends Rule 24.3 to provide that dissemination of the current index value will occur after the close of Regular Trading Hours (thus, no such dissemination will occur after the close of Extended Trading Hours, as no new index value will have been calculated during Extended Trading Hours) and from time-to-time on days on which transactions are made on the Exchange (pursuant to proposed Rule 6.1A(k), the Exchange will not disseminate index values during Extended Trading Hours).

that choose to do so without imposing additional burdens on those that do not. The Exchange also notes the following in connection with this goal:

• The Exchange will not require any Trading Permit Holder to participate during Extended Trading Hours. Trading during Extended Trading Hours will be optional.

• The Exchange will minimize Trading Permit Holders' preparation efforts to the greatest extent possible by allowing Trading Permit Holders to trade during Extended Trading Hours with the same connection lines,[45] message formats and data feeds that they use during Regular Trading Hours. The Exchange notes that Trading Permit Holders must use separate log-ins and acronyms for each trading session.

• The Exchange will have a pre-opening period before the opening of trading during Extended Trading Hours and an opening rotation in the same manner it does for Regular Trading Hours. The proposed rule change amends Rule 6.2B(a) to extend the applicability of the Hybrid Opening System to Extended Trading Hours. The proposed rule change states that the pre-opening period for Extended Trading Hours will be a period of time prior to 2 a.m., during which time the Hybrid Trading System will accept orders and quotes.[46] The proposed rule change also amends Rule 6.2B(b) to provide that the Hybrid Trading System will initiate the opening rotation procedure and send a notice to market participants after 2 a.m. with respect to Extended Trading Hours.[47] The Exchange notes that Rule 6.2B(f) provides that two Floor Officials may deviate from the standard manner of the opening procedure when necessary in the interests of maintaining a fair and orderly market. Because there may be reduced participation and liquidity during Extended Trading Hours, the Exchange believes it may be appropriate in certain circumstances for Floor Officials to determine to open a series during Extended Trading if, for example, there are no opening quotes if it believes there is sufficient order interest in the series.

• Order processing will operate in the same manner during Extended Trading Hours as it does for Regular Trading Hours. There will be no changes to the ranking, display, or allocation algorithms rules (as indicated above, the Exchange may apply a different allocation algorithm to a class during Extended Trading Hours than it applies to the class during Regular Trading Hours).

• There will be no changes to the processes for clearing, settlement, exercise and expiration.[48]

• The Exchange will report the Exchange best bid and offer and executed trades to the Options Price Reporting Authority (''OPRA'') during Extended Trading Hours in the same manner they are reported during Regular Trading Hours. Exchange proprietary data feeds will also be disseminated during Extended Trading Hours using the same formats and delivery mechanisms with which the Exchange disseminates them during Regular Trading Hours. Use of these proprietary data feeds will be optional.[49]

• The Exchange will require certain Trading Permit Holders to maintain connectivity to a backup trading facility during Extended Trading Hours, as it does during Regular Trading Hours.[50] The Exchange will announce which Trading Permit Holders must maintain this connectivity by Regulatory Circular.

• The Exchange will perform all necessary surveillance coverage during Extended Trading Hours.

• The Exchange will process all clearly erroneous trade breaks during Extended Trading Hours in the same manner it does during Regular Trading Hours and will have senior Help Desk personnel available to do so (the same personnel that do so during Regular Trading Hours), with one minor difference.

The proposed rule change amends Rule 6.25, Interpretation and Policy .02 to provide that, during Extended Trading Hours, the term ''Trading Officials'' as used in Rule 6.25 means at least two Exchange officials that are members of the Exchange's staff designated to perform Trading Official functions. During Regular Trading Hours, Trading Officials must include one Trading Permit Holder. However, because Trading Permit Holders may not be available during Extended Trading Hours, the Exchange believes it is appropriate to have the Exchange officials that are available make determinations under Rule 6.25 do so during Extended Trading Hours so that determinations that need to be made under the rule are done so in a timely and efficient manner in accordance with the rule.

The proposed rule change also amends Rule 6.25(a)(1)(iii) and (iv) to add a corresponding time for Extended Trading Hours by which parties may request reviews of transactions under that rule.

• The Exchange may halt trading during Extended Trading Hours in the interests of a fair and orderly market in the same manner it could during Regular Trading Hours pursuant to Rule 24.7. The proposed rule change amends Rule 24.7, Interpretation and Policy .01 to provide that one of the factors that the Exchange may consider when determining to halt trading in an option is if trading in related futures has been halted. Rule 24.7, Interpretation and Policy .01 currently provides that the Exchange may consider whether activation of price limits on futures exchanges when determining whether to halt trading in an index option; this proposed factor is merely an extension of the currently existing factor, which allows consideration of any halt in trading of the related futures product, not just a halt due to price limit activation. This factor is also consistent

[45] The Exchange notes that the same telecommunications lines used by Trading Permit Holders during Regular Trading Hours may be used during Extended Trading Hours. However, those lines will need to be connected to a separate application server at the Exchange to trade during Extended Trading Hours.

[46] The proposed rule change amends Rule 6.2 and 6.2A to state that the opening rotations described in those Rules will apply only during Regular Trading Hours. The Exchange will only use the Hybrid Opening System described in Rule 6.2B for Extended Trading Hours. The proposed rule change amends Rule 6.2B(b)(ii) to clarify that provision applies during Regular Trading Hours only. This provision primarily relates to floor trading, which will not be available during Extended Trading Hours. The proposed rule change also amends Rule 6.2B, Interpretations and Policies .01 and .08 to indicate that the modified opening procedure for Hybrid 3.0 classes and for classes on volatility settlement days apply during Regular Trading Hours only. The Hybrid 3.0 trading platform will not be available during Extended Trading Hours, and the Exchange will use the modified opening procedure for volatility settlement days during Regular Trading Hours only.

[47] The proposed rule change makes a corresponding change to Rule 24.13, which describes the opening rotation for index options, to include the applicable opening time for Extended Trading Hours.

[48] The Exchange has held discussions with the Options Clearing Corporation, which is responsible for clearance and settlement of all listed options transactions and has informed the Exchange that it will be able to clear and settle all transactions that occur on the Exchange and handle exercises of options during Extended Trading Hours.

[49] Any fees related to receipt of the OPRA data feed during Extended Trading Hours will be included on the OPRA fee schedule. Any fees related to receipt of the Exchange's proprietary data feeds during Extended Trading Hours will be included on the Exchange Fees Schedule (and will be included in a separate rule filing) or the Exchange's market data Web site, as applicable.

[50] Currently, all Market-Makers in exclusively listed option classes on CBOE who are streaming quotes in such classes, all DPMs in multiply listed option classes, and all Trading Permit Holders connected to the CBOE primary data center and transacting non-Trading Permit Holder customer business unless a Trading Permit Holder can demonstrate ready access to the back-up data center through another Trading Permit Holder connected to the back-up data center, must connect to the backup trading facility during Regular Trading Hours. *See* Regulatory Circular RG13–110.

with the Exchange's authority to consider whether trading in a related index option has been halted when determining whether to halt trading in an option on a security other than a stock option.[51]

In addition, Rule 24.7(d) provides that when the hours of trading of the underlying primary securities market for an index option do not overlap or coincide with those of the Exchange, the provisions in paragraphs (a) through (c) of that Rule (except for (a)(v)) do not apply. As Extended Trading Hours do not coincide with the hours of trading of the underlying primary securities market, the proposed rule change extends the applicability of paragraph (d) to Extended Trading Hours. Generally, the Exchange considers halting trading only in response to unusual conditions or circumstances, as it wants to interrupt trading as infrequently as possible and only if necessary to maintain a fair and orderly market. During Regular Trading Hours, it would be unusual, for example, for stocks or options underlying the index to not be trading or the current calculation of the index to not be available. However, as discussed above, there will be no calculation of underlying indexes during Extended Trading Hours, and Extended Trading Hours do not coincide with the regular trading hours of the underlying stock or options (there may be some overlap with trading of certain underlying stocks towards the end of Extended Trading Hours as mentioned above[52]). Thus, these factors described in Rule 24.7(a) (other than (a)(v)) are not unusual for Extended Trading Hours, and thus the Exchange does not believe it is necessary to consider these as reasons for halting trading during Extended Trading Hours.[53] Exclusion of Extended Trading Hours from those provisions will allow trading during that trading session to occur despite the existence of those conditions (if the Exchange considered the existence of those conditions during Extended Trading Hours as reasons to halt, trading during Extended Trading Hours would be halted every trading day). It is appropriate for the Exchange to consider any unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market during Extended Trading Hours, which may, for example, include whether the underlying primary securities market was halted at the close of the previous trading day (in which case the Exchange will evaluate whether the condition that led to the halt has been resolved or would not impact trading during Extended Trading Hours) or significant events that occur during Extended Trading Hours.

Rule 24.7(c) references Rule 6.3B regarding the initiation of a marketwide trading halt (or a circuit breaker). Under Rule 6.3B, the Exchange will halt trading in all classes whenever a circuit breaker is initiated in response to extraordinary market conditions. Rule 6.3B(b)(i) [sic] states that the Exchange will halt trading for 15 minutes if a Level 1 or Level 2 Market Decline occurs after 8:30 a.m. and up to and including 2:25 p.m. (or 11:25 a.m. for an early scheduled close). Additionally, the Exchange will not halt trading if a Level 1 or Level 2 Market Decline occurs after 2:25 p.m. (or 11:25 a.m., if applicable). Rule 6.3B(b)(ii) [sic] states that the Exchange will halt trading until the next trading day if a Level 3 Market Decline occurs. Exclusion of consideration of Rule 6.3B is consistent with the terms of Rule 6.3B, as the beginning of Extended Trading Hours occurs well past the 15-minute halt window for a Level 1 or Level 2 Market Decline, and is the next trading day in accordance with a Level 3 Market Decline. Additionally, if stock trading has not resumed within the 15-minute window, Rule 6.3B(c)(ii) [sic] allows the Exchange to open trading in all options not overlying any stocks for which trading has not resumed.

The Exchange believes that, even if stock trading was halted at the close of the previous trading day, the length of time between that time and the beginning of Extended Trading Hours is significant (over 10 hours), and the condition that led to the halt is likely to have been resolved. The proposed rule change allows the Exchange to consider unusual conditions or circumstances when determining whether to halt trading during Extended Trading Hours. To the extent a circuit breaker caused a stock market to be closed at the end of the prior trading day, the Exchange could consider, for example, whether it received notice from stock exchanges that trading was expected to resume (or not) the next trading day in determining whether to halt trading during Extended Trading Hours. Because the stock markets would not begin trading until after Extended Trading Hours opens, the Exchange believes it should be able to open Extended Trading Hours rather than waiting several hours to see whether stock markets open to allow investors to participate in Extended Trading Hours if the Exchange believe such trading can occur in a fair and orderly manner based on then-existing circumstances, not circumstances that existed many hours earlier.

Rule 24.7(c) currently provides that the factors in Rule 24.7(a) (other than (a)(v)) and circuit breakers initiated pursuant to Rule 6.3B do not apply to the Exchange when the hours of the underlying primary securities market for an index option do not overlap or coincide with those of the Exchange. As this is true for Extended Trading Hours, the proposed rule change merely extends this authority to such trading session.

The proposed rule change also amends certain rules to indicate that they apply separately to each trading session. Rule 6.23B provides that Trading Permit Holders may purchase bandwidth packets in accordance with the Exchange's Fees Schedule. The proposed rule change amends this rule to indicate that bandwidth packets can be purchased for each trading session.[54] Bandwidth packets for Regular Trading Hours are separate and distinct from bandwidth packets for Extended Trading Hours and may be used only during the applicable trading session. Rule 8.3A provides that the Exchange may impose a limit on the number of market participants that may quote electronically in a product.[55] The proposed rule change amends this rule to indicate that the quoting limit will apply during each trading session. The class quoting limit is intended to limit the number of quoters in a product at

[51] *See* Rule 6.3(a)(iv). As discussed above, VIX futures currently trade on CFE, which overlap with the proposed Extended Trading Hours on CBOE. The Exchange believes it is appropriate to consider halting trading in SPX and VIX options if CFE has halted trading in VIX futures.

[52] *See supra* note 6.

[53] Rule 24.7(a) provides that the Exchange may consider the following factors when determining whether to halt trading in an index option: (a) The extent to which trading is not occurring in the stocks or options underlying the index; (b) the current calculation of the index derived from the current market prices of the stocks is not available; (c) the ''current index level'' for a volatility index is not available or the cash (spot) value for a volatility index is not available; (d) the extent to which the rotation has been completed or other factors regarding the status of the rotation; or (e) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[54] Rule 6.23B currently provides that bandwidth limits are not in effect during pre-opening prior to 8:25 a.m. The proposed rule change amends this provision to indicate that the bandwidth limits will not be in effect five minutes before the beginning of a trading session to extend the applicability of this provision to the pre-opening period of Extended Trading Hours, as it will apply in the same manner to accommodate potentially increased activity prior to the opening.

[55] Pursuant to Rule 8.3A, Interpretation and Policy .01, the default class quoting limit for a Hybrid class is 50. Pursuant to that rule, the Exchange will submit a rule filing to increase this limit for a product (including for a product during Extended Trading Hours) and announce any changes to the limit in an Information Circular.

the same time, so the Exchange believes it is appropriate for the limit to apply to each trading session, particularly because the quoters during Regular Trading Hours may be different than those during Extended Trading Hours. Rule 8.18 makes available to Market-Makers a quote risk monitor mechanism (''QRM'') pursuant to which Market-Makers may establish parameters to manage their risk. The proposed rule change amends this rule to indicate that parameters established by Market-Makers apply to each trading session.[56] Thus, a Market-Maker that elects to use QRM for Regular Trading Hours and Extended Trading Hours will have to separately establish parameters for each trading session (although a Market-Maker may elect to use the same parameters for both trading sessions or use QRM for one trading session and not the other). These proposed rule changes are consistent with the separation of the trading sessions and provides for the application of different parameters to address the differing market conditions that may be present during each trading session.

Certain rules currently include general phrases related to a day, trading, such as normal trading and the close of trading. The proposed rule change makes technical changes to Rules 6.2B, Interpretation and Policy .03, 6.13(b)(vi), 8.7, Interpretation and Policy .01, and 11.1(c) and Interpretation and Policy .03 to incorporate the terminology included in this proposed rule change to specify the appropriate trading session(s) being referenced in those rules. The Exchange will disseminate last sale and quotation information during Extended Trading Hours through OPRA pursuant to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (the ''OPRA Plan''), as it does during Regular Trading Hours.[57] It will also disseminate an opening quote and trade price through OPRA for Extended Trading Hours.[58] Therefore, all Trading Permit Holders that trade during Extended Trading Hours will have access to all quote and sale information during those hours.

The Exchange understands that systems and other issues may arise and is committed to resolving those issues as quickly as possible, including during Extended Trading Hours. Thus, the Exchange will have appropriate staff on-site and otherwise available as necessary during Extended Trading Hours to handle any technical and support issues that may arise during those hours. Additionally, the Exchange will have Exchange Floor Officials available to address any trading issues that may arise during Extended Trading Hours.[59] The Exchange is also committed to fulfilling its obligations as a self-regulatory organization at all times, including during Extended Trading Hours, and will have appropriate trained, qualified regulatory staff in place during Extended Trading Hours to the extent it deems necessary to satisfy those obligations. The Exchange's surveillance procedures will also be revised to incorporate transactions that occur and orders and quotations that are submitted during Extended Trading Hours. The Exchange believes that its surveillance procedures are adequate to properly monitor trading of SPX and VIX options during Extended Trading Hours.

As discussed above, one of the primary goals of adding Extended Trading Hours is to attract investors located outside of the United States. In connection with extended trading hours on CFE, the Exchange implemented a communications hub near London, England in February 2013. The hub consists of telephone switch equipment and communication lines to provide direct access to the matching engine located in the United States. Currently, the hub is available to CFE trading privilege holders. However, upon launch of Extended Trading Hours, CBOE expects to allow Trading Permit Holders to connect to the hub to reach CBOE's matching engine located in the United States instead of setting up their own communication lines.[60] The Exchange believes the hub will provide Trading Permit Holders with a more efficient and cost-effective way to connect and submit orders to the Hybrid Trading System and thus encourage trading by these non-U.S. investors during Extended Trading Hours.[61]

In connection with the implementation of the hub for Trading Permit Holders, the proposed rule change amends the definition of Hybrid Trading System in Rule 1.1(aaa) to provide that the System will include any connectivity to the Exchange's trading platform that is administered by or on behalf of the Exchange, such as a communications hub. Additionally, to accommodate the potential interest of non-U.S. persons or organizations to become Trading Permit Holders, the proposed rule change amends Rule 3.4 regarding foreign Trading Permit Holders. Currently, Rule 3.4 provides that a Trading Permit Holder that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Commission and the Exchange must (i) prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars, (ii) reimburse the Exchange for any expense incurred in connection with examination of the Trading Permit Holder to the extent that such expenses exceed the cost of examining a Trading Permit Holder located within the United States, and (iii) ensure the availability of an individual fluent in English knowledgeable in securities and financial matters to assist the representatives of the Exchange during examinations.[62] The proposed rule change provides that if a Trading Permit Holder applicant is not domiciled in (with respect to individuals) or organized under the laws of (with respect to organizations) the United States, then, in order for the Exchange

[56] The proposed rule change also makes the nonsubstantive change to add a period after ''Rule 8.18'' in the rule heading to conform to the other rule headings throughout the rules.

[57] The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981). The full text of the OPRA Plan is available at *http://www.opradata.com.* All operating U.S. options exchanges participate in the OPRA Plan. The operator of OPRA informed CBOE that it intends to add a modifier to the disseminated information during Extended Trading Hours.

[58] The proposed rule change makes a corresponding change to Rule 6.2B(d).

[59] The Exchange notes that, to conduct trading during Extended Trading Hours, persons that are not Trading Permit Holders, such as employees of affiliates of Trading Permit Holders located outside of the United States, may be transmitting orders and quotes during Extended Trading Hours (such non-Trading Permit Holders would not have direct access to the Exchange, and thus those orders and quotes would be submitted to the Exchange through Trading Permit Holders' systems subject to applicable laws, rules and regulations). Trading Permit Holders may authorize (in a form and manner determined by the Exchange) individuals at these non-Trading Permit Holder entities to contact the Help Desk during Extended Trading Hours to address any issues.

[60] Market participants may also connect to the hub to receive market data.

[61] *See supra* note 21 regarding who may directly access the Exchange on behalf of a Trading Permit Holder.

[62] The proposed rule change amends Rule 3.4(a)(iii) to provide that the individual referenced in that provision must be familiar with the Trading Permit Holder's securities business and financial matters, not just securities and financial matters in general. This more clearly states the intent of the rule to ensure that the individual is familiar with the appropriate matters and thus able to provide sufficient information to the Exchange as necessary. This proposed rule change is also consistent with CFE Rule 305B, upon which the proposed rule change is based.

to approve the applicant to be a Trading Permit Holder, the individual or organization must, in addition to the other conditions set forth in Rules 3.2 and 3.3:[63] (i) Be domiciled in or organized under the laws of a foreign jurisdiction expressly approved by the Exchange,[64] which approval may be limited to one or more specified categories of Trading Permit Holders or Trading Permit Holder activities or be contingent upon the satisfaction of specified conditions by such individual or organization, (ii) be subject to the jurisdiction of the federal courts of the United States and the courts of the state of Illinois, and (iii) prior to acting as agent for a customer from a foreign jurisdiction, obtain written consent from the customer that permits the individual or organization to provide information regarding the customer and the customer's trading activities to the Exchange in response to a regulatory request for information pursuant to the rules of the Exchange. The Exchange believes these additional requirements for foreign Trading Permit Holders are reasonable so that the Exchange is able to ensure it is in compliance with any regulatory requirements that apply to it in foreign jurisdictions in which Trading Permit Holders are located, to obtain all books, records, reports and other information regarding the Trading Permit Holders and their customers that is necessary to conduct its surveillances, and to provide it with jurisdiction over the Trading Permit Holders to enforce its rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[65] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[66] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[67] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change is a competitive initiative designed to improve the Exchange's marketplace for the benefit of investors. The proposed rule change provides a new investment opportunity within the options trading industry that is consistent with the continued globalization of the securities markets and closer aligns the Exchange's trading hours with extended trading hours of stock exchanges and near round-the-clock trading of futures exchanges. The Exchange believes the proposed rule change will enhance competition by providing a service to investors that other options exchanges currently are not providing. The Exchange believes that competition among exchanges ultimately benefits the entire marketplace. Given the robust competition among the options exchanges, innovative trading mechanisms are consistent with the above-mentioned goals of the Exchange Act.

The proposed rule change also provides a mechanism for the Exchange to more effectively compete with exchanges located outside of the United States. Global markets have become increasingly interdependent and linked, both psychologically and through improved communications technology. This has been accompanied by an increased desire among investors to have access to U.S.-listed exchange products outside of Regular Trading Hours, and the Exchange believes this desire extends to its exclusively listed products. The Exchange believes that the proposed rule change is reasonably designed to provide an appropriate mechanism for trading outside of Regular Trading Hours while providing for appropriate Exchange oversight pursuant to the Act, trade reporting, and surveillance.

While no other options exchanges are currently open for trading outside of Regular Trading Hours, as discussed above, the Commission has authorized stock exchanges to be open for trading outside of those hours pursuant to the Act. Additionally, futures exchanges are also outside of those hours. Thus, the proposed rule change to adopt Extended Trading Hours is not novel. The Exchange currently has authority to list for trading the two products that will initially be available during Extended Trading Hours. As the proposed rule change is a new Exchange initiative, the Exchange believes it is reasonable to trade a limited number of classes upon implementation for which demand is believed to be the highest during Extended Trading Hours.

The vast majority of the Exchange's trading rules will apply during Extended Trading Hours in the same manner as during Regular Trading Hours, which rules have all been approved by the Commission as being consistent with the goals of the Act. Rules that will apply equally during Extended Trading Hours include rules that protect public customers, impose best execution requirements on Trading Permit Holders, and prohibit acts and practices that are inconsistent with just and equitable principles of trade as well as fraudulent and manipulative practices. The proposed rule change also provides opportunities for price improvement during Extended Trading Hours and applies the same allocation and priority rules that are available to the Exchange during Regular Trading Hours. The Exchange believes that the rules that will apply during Extended Trading Hours will continue to promote just and equitable principles of trade and prevent fraudulent and manipulative acts.

Additionally, the Exchange believes that the proposed rule change will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as the Exchange will ensure that adequate staffing is available during Extended Trading Hours to provide appropriate trading support during those hours, as well as Exchange Officials to make any necessary determinations under the Rules during Extended Trading Hours (such as trading halts and trade nullification for obvious errors). The Exchange is also committed to fulfilling its obligations as a self-regulatory organization at all times, including during Extended Trading Hours. The Exchange's surveillance procedures will also be revised to incorporate transactions that occur and orders and quotations that are submitted during Extended Trading Hours. The Exchange believes that its surveillance procedures are adequate to

[63] The proposed rule change also specifically imposes the requirements of Rule 3.4(a) on any Trading Permit Holder not domiciled in or organized under the laws of the United States.

[64] The proposed rule change allows the Exchange to withdraw approval of a foreign jurisdiction at any time and provides any Trading Permit Holder domiciled in, or organized under the laws of, that foreign jurisdiction with three months following the withdrawal to come into compliance with Rule 3.4. If that does not occur, the Exchange may terminate the Trading Permit Holder's status as a Trading Permit Holder.

[65] 15 U.S.C. 78f(b).

[66] 15 U.S.C. 78f(b)(5).

[67] *Id.*

properly monitor trading of SPX and VIX options during Extended Trading Hours. Clearing and settlement processes will be the same for Extended Trading Hours transactions as they for Regular Trading Hours transactions.

The proposed rule change also allows all Trading Permit Holders and their associated persons with access to the Hybrid Trading System to obtain Trading Permits to trade during Extended Trading Hours, but does not require any Trading Permit Holder to participate during Extended Trading Hours, and thus does not unfairly discriminate among market participants. The Exchange also notes that Trading Permit Holders will be able to trade during Extended Trading Hours using the same connection lines, message formats and data feeds that they do during Regular Trading Hours, minimizing any preparation efforts necessary to participate during Extended Trading Hours.

Market-Makers that elect to have appointments during Extended Trading Hours will be subject to the same quoting obligations with respect to their appointments as they are during Regular Trading Hours, which will be separately determined for each trading session, except that no open outcry quoting obligation will apply during Extended Trading Hours, as there will be no open outcry trading. Additionally, the proposed rule change provides that the Exchange may not impose bid/ask differential requirements during Extended Trading Hours. Because of the expected lower liquidity, wider spreads and higher volatility during Extended Trading Hours, the Exchange believes this flexibility is appropriate in order to address these conditions. The Exchange notes that other options exchanges that are fully electronic (and thus have no open outcry trading) impose no bid/ask differential requirements on Market-Makers during Regular Trading Hours but have substantially similar continuous electronic quoting obligations as the Exchange will have during Extended Trading Hours. Therefore, the Exchange believes the proposed rule change provides the appropriate balance between the benefits and obligations of Market-Makers during Extended Trading Hours and thus consistent with the Act.

While LMMs will only be required to meet the same obligations as Market-Makers during Extended Trading Hours, the Exchange believes it may be unduly burdensome to impose heightened quoting obligations during Extended Trading Hours as it does during Regular Trading Hours given the expected lower participation and trading volume and liquidity. The Exchange believes LMMs should have the flexibility to determine whether satisfying the heightened standards is appropriate for its business given the then-current market conditions during Extended Trading Hours. Because there are no additional obligations imposed on LMMs during Extended Trading Hours, they receive no additional benefits (*i.e.,* no participation entitlement) during Extended Trading Hours. The incentive program is not unfairly discriminatory, as all Trading Permit Holders have the opportunity to apply to act as LMMs during Trading Permit Holders and participate in the incentive program, and the Exchange will appoint LMMs based on the factors set forth in the rules and otherwise disclosed to Trading Permit Holders.[68]

The LMM incentive program during Extended Trading Hours is reasonable, as it is designed to encourage increased quoting to add liquidity during those hours and, while the heightened standard is substantially similar to the Regular Trading Hours quoting obligation, is similar to other incentive programs. While it may have a different type of threshold than those programs, the threshold is designed to achieve the purpose the Exchange is seeking through this program (added liquidity during Extended Trading Hours). LMMs that satisfy the heightened continuous quoting standard and the opening quoting standard in a class receive a rebate pursuant to the Fees Schedule. The Exchange believes it is appropriate to offer this LMM incentive program during Extended Trading Hours (as opposed to imposing heightened obligations and providing a participation entitlement) given the potential added costs that an LMM may undertake in order to satisfy the heightened quoting standards and expected lower trading volume (and thus fewer opportunities to receive a participation entitlement) during that trading session. Additionally, if an LMM does not satisfy these standards, then it will not receive the rebate set forth in the Fees Schedule. The Exchange believes it will benefit all market participants in Extended Trading Hours to encourage LMMs to satisfy the heightened quoting standards, which may increase liquidity during those hours.

With respect to determining satisfaction by LMMs of these standards to receive the monthly rebate on a monthly basis, the Exchange expects Market-Makers to have fewer employees available during Extended Trading Hours than Regular Trading Hours to address any systems issues that may arise (and thus such issues may take longer to correct), which will make achievement of the heightened standards during Extended Trading Hours more difficult and potentially unduly burdensome. Because the Exchange expects reduced liquidity and trading activity during Extended Trading Hours, the Exchange believes applying the heightened quoting standard monthly will incentive more Trading Permit Holders to apply to be LMMs during Extended Trading Hours and thus increase liquidity during the trading session. Unlike during Regular Trading Hours (during which obligations must be satisfied daily), as discussed above, these standards are not obligations that an LMM must satisfy to receive a participation entitlement but rather an incentive to receive a rebate. A monthly standard is consistent with other incentive programs.[69] The Exchange believes having monthly quoting standards will encourage more Market-Makers to apply to act as LMMs during Extended Trading Hours, which may ultimately provide greater liquidity during the trading session (even if these standards represent slight reductions from the corresponding Regular Trading Hours LMM obligations), ultimately benefiting all market participants during Extended Trading Hours. This greater liquidity benefits all market participants by potentially providing more trading opportunities and tighter spreads. The Exchange will further discuss the LMM incentive program in a separate fee filing.

The proposed rule change clearly identifies the ways in which trading processes during Extended Trading Hours will differ from trading processes during Regular Trading Hours. Similarly, the proposed rule change indicates throughout the rules to which trading session they apply. These changes ensure that investors and the public are aware of any differences among the trading sessions and thus promote compliance by Trading Permit Holders with applicable rules during each trading session. The Exchange believes these differences are consistent with the separation of the trading sessions, the Exchange's goal to permit trading during Extended Trading Hours for those Trading Permit Holders that choose to do so without imposing

[68] *See* Regulatory Circular RG14–123 (dated August 12, 2014).

[69] *See, e.g.,* Securities Exchange Act Release No. 34–66054 (December 23, 2011), 76 FR 82332 (December 30, 2011) (SR–CBOE–2011–120) (adoption of volume incentive program that provides a rebate based on monthly trading activity) and the CBOE Fees Schedule.

additional burdens on those that do not, and the expected differences in liquidity, participation and trading activity between Regular Trading Hours and Extended Trading Hours. The flexibility provided to the Exchange to make determinations for each trading session will allow the Exchange to apply settings and parameters to address the different market conditions that may be present during each trading session. Additionally, to further protect investors from any additional risks related to trading during Extended Trading Hours, the proposed rule change requires that disclosures be made to customers describing these potential risks. The separation of Regular Trading Hours and Extended Trading Hours (including the use of separate Books) also protects investors by preventing any investors who do not wish to trade during Extended Trading Hours from having any orders or quotes trade during those hours. Consistent with the goal of investor protection, the Exchange will not allow market orders during Extended Trading Hours due to the expected increased volatility and decreased liquidity during those hours.

The proposed rule change is also consistent with Section 11A of the Act and Regulation NMS thereunder, because it provides for the dissemination of transaction and quotation information during Extended Trading Hours through OPRA pursuant to the OPRA Plan, which Commission approved and indicated to be consistent with the Act. While Section 11A and Regulation NMS contemplate an integrated system for trading securities, they also envision competition between markets, and innovation that provides marketplace benefits to attract order flow to an exchange does not result in unfair competition if the other markets are free to compete in the same manner.[70]

Additionally, the proposed rule change is also consistent with Rule 15c3–5 under the Act, in that it includes in the definition of System any connectivity to the Exchange's trading platform administered by or on behalf of the Exchange, such as the London hub. Thus, only Trading Permit Holders may connect to the hub.[71] The Exchange believes the proposed rule change promotes compliance by Trading Permit Holders with the market access requirements under that rule.[72] Further, the proposed rule change related to foreign Trading Permit Holders, including the requirement that the Exchange approve foreign jurisdictions from which Trading Permit Holders may connect, will promote compliance by the Exchange with regulatory requirements of governments and regulatory authorities outside of the United States. The proposed rule change that requires foreign Trading Permit Holders acting as agents for customers for foreign jurisdictions to obtain consent from customers that permits the Trading Permit Holders to provide information regarding their customers and their customers' trading activity to the Exchange enhances the Exchange's ability to satisfy its self-regulatory obligations by ensuring it is able to receive sufficient information to conduct its surveillances and investigations.

When Congress charged the Commission with supervising the development of a ''national market system'' for securities, Congress stated its intent that the ''national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.[73] Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention to determine products and services in the securities markets.[74] This consistent and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition in the options trading industry. The fact that an exchange proposed something new is a reason to be receptive, not skeptical—innovation is the life-blood of a vibrant competitive market—and that is particularly so given the continued internalization of the securities markets, as exchanges continue to implement new products and services to compete not only in the United States but throughout the world. Options exchanges continuously adopt new and different products and trading services in response to industry demands in order to attract order flow and liquidity to increase their trading volume. This competition has led to a growth in investment choices, which ultimately benefits the marketplace and the public. The Exchange believes that the proposed rule change will help further competition by providing market participants with yet another investment option.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. All Trading Permit Holders will be able to obtain a separate Trading Permit to trade during Extended Trading Hours. However, the proposed rule change does not impose additional burdens on those Trading Permit Holders that do not elect to trade during Extended Trading Hours. Additionally, while Market-Makers may choose to obtain an appointment for Extended Trading Hours, they are not required to do so, and if they do, they will be subject to the same quoting obligations that otherwise apply during Regular Trading Hours, with the exception of open outcry quoting obligations and potentially bid/ask differential requirements (although the Exchange will determine compliance with those obligations separately for each trading session). Similarly, while LMMs are not required to satisfy a heightened quoting standard and opening quoting standard, they do not receive the additional benefit of a participation entitlement. The Exchange believes the obligations imposed on

[70] *See* Exchange Act Release No. 29237 (May 24, 1991) (SR–NYSE–1990–052 and SR–NYSE–1990–053) (approval of proposed rule change for NYSE to extend its trading hours outside of Regular Trading Hours). The Exchange also notes that currently no other U.S. options exchange provides for trading during hours outside of Regular Trading Hours as is provided for in the proposed rule change, and only exclusively listed products will be available for trading during Extended Trading Hours, so there is currently no need for intermarket linkage during Extended Trading Hours.

[71] *See supra* note 21.

[72] Please note that in the adopting release for Rule 15c3–5 (risk management controls for brokers or dealers with market access), the Commission indicated that a broker-dealer relying on risk management technology developed by third parties should perform appropriate due diligence to help assure the controls are reasonably designed, effective, and otherwise consistent with Rule 15c3–5. Mere reliance on representations of the third-party technology developer—even if an exchange or other regulated entity—is insufficient to meet this due diligence standard.

[73] *See* H.R. Rep. No. 94–229, at 92 (1975) (Conf. Rep.).

[74] *See* S. Rep. No. 94–75, 94th Cong., 1st Sess. 8 (1975) (''The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services.''); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (''The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.''); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation ''has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies'').

Market-Makers (including LMMs) during Extended Trading Hours is an appropriate balance of obligations and benefits, and the Exchange notes that the quoting obligations applicable during Extended Trading Hours are nearly identical to those of another options all-electronic options exchange (that has no bid/ask differential requirements during Regular Trading Hours). Additionally, elimination of bid/ask differential requirements during Extended Trading Hours is offset by the added costs Market-Makers may need to undertake to quote and fewer trades in which they may participate during Extended Trading Hours. Please see ''Purpose'' and ''Statutory Basis'' above for additional discussion regarding the balance of these benefits and obligations during Extended Trading Hours.

The Exchange believes the LMM incentive program during Extended Trading Hours will encourage LMMs to provide more liquidity during Extended Trading Hours, which may create more trading opportunities and tighter spreads and ultimately benefit all market participants. Please see ''Purpose'' and ''Statutory Basis'' above for additional discussion regarding the competitive impact of the proposed LMM incentive program, including the potential for increased liquidity during Extended Trading Hours. The Exchange also notes that Trading Permit Holders will be able to trade during Extended Trading Hours using the same connection lines, message formats, and data feeds that they do during Regular Trading Hours, reducing the potential added costs that Trading Permit Holders that elect to participate in Extended Trading Hours may need to undertake.

The Exchange believes the proposed rule change is a new competitive initiative that will benefit the marketplace and investors. The Exchange also believes the proposed rule change will enhance competition by providing a service to investors that other options exchanges currently are not providing. Additionally, all options exchanges are free to compete in the same manner. The Exchange further believes that the same level of competition among options exchanges will continue during Regular Trading Hours. Because CBOE proposes to make only exclusively listed products available for trading during Extended Trading Hours, and because quotes and orders submitted during Extended Trading Hours will not trade with quotes and orders submitted during Regular Trading Hours, the proposed rule change will have no effect on the national best prices or trading during Regular Trading Hours. The Exchange also believes the proposed rule change could increase its competitive position outside of the United States by providing investors with an additional investment vehicle with respect to their global trading strategies during times that correspond with regular trading hours outside of the United States.

Please see ''Statutory Basis'' above for additional discussion regarding the procompetitive impact of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2014–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2014–062. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–062 and should be submitted on or before October 3, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[75]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–21731 Filed 9–11–14; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14091 and #14092]

Tennessee Disaster Number TN–00082

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–4189–DR), dated 08/13/2014.

Incident: Severe storms, tornadoes, straight-line winds, and flooding.

Incident Period: 06/05/2014 through 06/10/2014.

DATES: *Effective Date:* 09/03/2014.

Physical Loan Application Deadline Date: 10/14/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 05/13/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and

[75] 17 CFR 200.30–3(a)(12).

Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for private non-profit organizations in the State of Tennessee, dated 08/13/2014, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Claiborne, Gibson, Giles, Haywood, Weakley.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2014–21773 Filed 9–11–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14103 and #14104]

New York Disaster #NY–00150

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of NEW YORK dated 09/04/2014.

Incident: Severe storms and flooding.

Incident Period: 08/12/2014 through 08/13/2014.

DATES: *Effective Date:* 09/04/2014.

Physical Loan Application Deadline Date: 11/03/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 06/04/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Suffolk.

Contiguous Counties:

New York, Nassau.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	4.125
Homeowners Without Credit Available Elsewhere	2.063
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14103 6 and for economic injury is 14104 0.

The State which received an EIDL Declaration # is New York.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–21774 Filed 9–11–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Centers Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the cancellation for September 16, 2014 meeting of the National Small Business Development Centers (SBDC) Advisory Board.

DATES: The meeting for September is cancelled for the following date: Tuesday, September 16, 2014 at 1:00 p.m. EST—Cancelled.

ADDRESSES: This meeting will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of this meeting is to discuss following issues pertaining to the SBDC Advisory Board:

—SBA Update
—Annual Meetings
—Board Assignments
—Member Roundtable

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Monika Nixon by fax or email. Her contact information is Monika Nixon, Program Specialist, 409 Third Street SW., Washington, DC 20416, Phone, 202–205–7310, Fax 202–481–5624, email, *monika.nixon@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Monika Nixon at the information above.

Diana Doukas,

Committee Management Officer.

[FR Doc. 2014–21775 Filed 9–11–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 8869]

60-Day Notice of Proposed Information Collection: Foreign Diplomatic Services Applications (FDSA)

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *November 12, 2014.*

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search

for the document by entering ''Public Notice 8869'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.

• *Email: OFMinfo@state.gov.*

• *Mail:* 2201 C St. NW., Washington, DC 20520; 3507 International Place NW., Washington, DC 20008.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Allyson King at 3507 International Place NW., Washington, DC 20008, who may be reached on (202) 647–3417 or at *kingae@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Foreign Diplomatic Services Applications (FDSA).

• *OMB Control Number:* 1405–0105.

• *Type of Request:* Revision of a Currently Approved Collection.

• *Originating Office:* M/OFM.

• *Form Number:* DS–99, DS–98, DS–100, DS–101, DS–102, DS–104, DS–1504, DS–1972, DS–2003, DS–2004, DS–2005, DS–2006, DS–2007, DS–2008, DS–2003 E, DS–1972 E, DS–4138, DS–4139, DS–4140, DS–4155, DS–7675, DS–1972 D, DS–1972 T, DS–4284, DS–4285.

• *Respondents:* Foreign Mission Community.

• *Estimated Number of Respondents:* 1108.

• *Estimated Number of Responses:* 76,274 annually.

• *Average Time per Response:* 12 minutes.

• *Total Estimated Burden Time:* 12051.7 hours annually.

• *Frequency:* On occasion; annually.

• *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: Collection information instruments dealing with information collection from the foreign mission community, to include the electronic data compilation (e-Gov), have been combined under one information collection request, collectively referred to as the ''Foreign Diplomatic Services Applications''. These information collection instruments provide M/OFM with the information necessary to provide and administer an effective and efficient benefits, privileges, and immunities program by which foreign missions and eligible applicants may apply for entitled benefits from the U.S. Department of State.

Methodology:

Information may be received via mail, fax, or electronic submission.

Dated: September 4, 2014.

Clifton C. Seagroves,

Director, Acting, Office of Foreign Missions, Department of State.

[FR Doc. 2014–21809 Filed 9–11–14; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF STATE

[Public Notice: 8867]

Culturally Significant Objects Imported for Exhibition Determinations: ''Make A Joyful Noise: Renaissance Art and Music at Florence Cathedral''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Make A Joyful Noise: Renaissance Art and Music at Florence Cathedral,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the High Museum of Art, Atlanta, Georgia, from on or about October 25, 2014, until on or about January 11, 2015, The Detroit Institute of Arts, Detroit, Michigan, from on or about February 6, 2015, to on or about May 17, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 5, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–21826 Filed 9–11–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 8866]

Culturally Significant Objects Imported for Exhibition Determinations: ''Dangerous Perfection: Funerary Vases From Southern Italy'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Dangerous Perfection: Funerary Vases from Southern Italy,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum, Los Angeles, CA, from on or about November 19, 2014, until on or about May 11, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including lists of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 5, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–21813 Filed 9–11–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 8868]

Advisory Committee on International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; FACA committee meeting announcement.

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of a meeting of the Advisory Committee on International Postal and Delivery Services. This Committee has been formed in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

DATE AND TIME: The meeting will be held on Monday, September 29, from 9 a.m. to 4:30 p.m.

LOCATION: The American Institute of Architects, Board Room, 1735 New York Avenue NW., Washington, DC 20006.

PUBLIC INPUT: Any member of the public interested in providing public input to the meeting should contact Ms. Shereece Robinson, whose contact information is listed under **FOR FURTHER INFORMATION** section of this notice. Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speaker list must be received in writing (letter, email or fax) prior to the close of business on Monday, September 22, 2014; written comments from members of the public for distribution at this meeting must reach Ms. Robinson by letter, email or fax by this same date. A member of the public requesting reasonable accommodation should make the request to Ms. Robinson by that same date.

MEETING AGENDA: The agenda of the meeting will include: An update on developments in and upcoming meetings of the Universal Postal Union (UPU) and an examination of issues arising from discussions that are underway in the UPU and elsewhere on ways to increase the volume of e-commerce shipments in international mail. Among the issues to be considered are current constraints on the use of the mail for international merchandise shipment and possible competiveness concerns arising from the customs treatment of mail and other aspects of the prevailing international postal regime. A full agenda and meeting documents will be posted on the Committee Web site at *www.state.gov/p/io/ipp/mtgs/index.htm* as they become available.

For further information, please contact Ms. Shereece Robinson of the Office of Specialized and Technical Agencies (IO/STA), Bureau of International Organization Affairs, U.S. Department of State, at tel. (202) 647–1044, FAX (202) 647–8902, by email at *RobinsonSA2@state.gov* or by mail at IO/STA, Room 5333 HST; U.S. Department of State; Washington, DC 20520–6319.

Dated: September 5, 2014.

Joseph P. Murphy,

Designated Federal Officer, Advisory Committee on International Postal and Delivery Services, Office of Specialized and Technical Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 2014–21806 Filed 9–11–14; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Neighborhood Environmental Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to undertake an information collection.

The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2014, vol. 79, no. 113, pages 33797–33798. The purpose of this research is to conduct a nation-wide survey to update the scientific evidence of the relationship between aircraft noise exposure and its effects on communities around airports.

There were seven responses to the 60-day **Federal Register** Notice. The notice received comments from the Airlines for America (A4A), Village of Schaumburg, Illinois residents, City of Wood Dale Illinois residents, and several other private citizens representing themselves.

The notice received several positive comments stating that this survey is ''absolutely necessary to update relationship between aircraft noise exposure and its effect on communities around United State airports.'' There were clarifying questions on survey background in general, questionnaire content, method of airport selection and participants' selection.

DATES: Written comments should be submitted by October 14, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–XXXX (to be determined).

Title: Neighborhood Environmental Survey.

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Clearance of a new information collection.

Background: This Neighborhood Environmental Survey is necessary to update the relationship between aircraft noise exposure and its effect on communities around United States civilian airports. This survey will collect data on residents' annoyance from a representative sample of households surrounding airports chosen from a representative sample, and relate the annoyance level to the noise exposure for that address. The FAA will use the information from this collection to derive the empirical data to support potential updates to or validation of the national aviation noise policy.

Respondents: 12,147 respondents affected by airport noise.

Frequency: One time per respondent.

Estimated Average Burden per Response: Five minutes for a mail survey, twenty minutes for a telephone survey for selected respondents.

Estimated Total Annual Burden: 1,544 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and

Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on September 9, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–21795 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Seventh Meeting: RTCA Special Committee 224, Airport Security Access Control Systems

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

ACTION: Meeting Notice of RTCA Special Committee 224, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the twenty-seventh meeting of the RTCA Special Committee 224, Airport Security Access Control Systems.

DATES: The meeting will be held on September 23rd, 2014 from 10:00 a.m.–2:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

September 23rd, 2014

- Welcome/Introductions/Administrative Remarks
- Report from the TSA
- Report on Safe Skies Document Distribution
- Individual Document Section Reports
- Action Items for Next Meeting
- Time and Place of Next Meeting
- Any Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 8th 2014.

Mohannad Dawoud,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–21800 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

92nd Meeting: RTCA Special Committee 159, Global Positioning Systems (GPS)

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

ACTION: Meeting Notice of RTCA Special Committee 159, RTCA Special Committee 159, Global Positioning Systems (GPS).

SUMMARY: The FAA is issuing this notice to advise the public of the ninety-second meeting of the RTCA Special Committee 159, Global Positioning Systems (GPS).

DATES: The meeting will be held October 6–10, 2014 from 9:00 a.m.–5:00 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 159. The agenda will include the following:

Working Group Sessions

October 6

- Working Group 2, GPS/WAAS, ARINC & A4A Rooms.

October 7

- Working Group 2, GPS/WAAS, ARINC & A4A Rooms Rooms.

October 8

- Working Group 4, GPS/Precision Landing, MacIntosh-NBAA Room. Note location-NBAA, 1200 G Street NW., Suite 1100, Washington, DC 20005.

October 9

- Working Group 4, GPS/GPS/Precision Landing Guidance MacIntosh-NBAA Room and Colson Board Room.
- Morning—9:00–12:00/Noon p.m., Working Group 7, GPS/Antennas, ARINC & A4A Room.
- Afternoon—1:00–5:00 p.m., Working Group 6, GPS/Interference, ARINC & A4A Room.

October 10—Starting at 9:00 a.m.

- MacIntosh-NBAA & Colson Board Room.
- Chairman's Introductory Remarks.
- Approval of Summary of the Ninety-First Meeting held March 14, 2014, RTCA Paper No. 187–14/SC159–1019.
- Review Working Group (WG) Progress and Identify Issues for Resolution.
- GPS/3nd Civil Frequency (WG–1).
- GPS/WAAS (WG–2).
- GPS/GLONASS (WG–2A).
- GPS/Inertial (WG–2C).
- GPS/Precision Landing Guidance (WG–4).
- GPS/Airport Surface Surveillance (WG–5).
- GPS/Interference (WG–6).
- GPS/Antennas (WG–7).
- Review of EUROCAE Activities.
- Briefing—DOT's GPS Adjacent Band Compatibility Plan.
- Advance Receiver Autonomous Integrity Monitoring (ARAIM)—Discussion.
- Assignment/Review of Future Work.
- Other Business.
- Date and Place of Next Meeting.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 8, 2014.

Mohannad Dawoud,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–21796 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0189]

Agency Information Collection Activities; Revision of an Approved Information Collection: Hours of Service (HOS) of Drivers Regulations

AGENCY: FMCSA, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to revise and extend an ICR entitled, ''Hours of Service (HOS) of Drivers Regulations.'' The HOS rules require most commercial motor vehicle (CMV) drivers to maintain on the CMV a record of duty status (RODS) current to the last change in duty status. The RODS is critical to FMCSA's safety mission because it helps roadside enforcement officials determine if CMV drivers are complying with the HOS rules limiting driver on-duty and driving time and requiring periodic off-duty time. The information helps FMCSA protect the public by reducing the number of tired CMV drivers on the highways.

DATES: Please send your comments by October 14, 2014. OMB must receive your comments by this date in order to act on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA 2014–0189. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Schultz, Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–4325; email *buz.schultz@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Hours of Service (HOS) of Drivers Regulations.

OMB Control Number: 2126–0001.

Type of Request: Revision of an information collection.

Respondents: Motor Carriers of Property and Passengers, Drivers of CMVs.

Estimated Number of Respondents: 3.17 million (2.84 million CMV drivers + 0.33 million motor carriers).

Estimated Time per Response: CMV driver using paper RODS: 11 minutes. CMV driver using technology: 2 minutes. Motor carrier: 3 minutes.

Expiration Date: 12/31/2014.

Frequency of Response: Drivers: 240 days per year; Motor Carriers: 240 days per year.

Estimated Total Annual Burden: 106.89 million hours.

Background: Statutory authority for regulating the HOS of drivers operating CMVs in interstate commerce is derived from 49 U.S.C. 31136 and 31502. The penalty provisions are located at 49 U.S.C. 521, 522 and 526, as amended. The rule is codified at 49 CFR 395.8. The FMCSRs also state:

> ''No driver shall operate a commercial motor vehicle, and a commercial motor carrier shall not require or permit a driver to operate a commercial motor vehicle, while the driver's ability or alertness is so impaired, or so likely to become impaired, through fatigue, illness, or any other cause, as to make it unsafe for him/her to begin or continue to operate the commercial motor vehicle'' (49 CFR 392.3).

The FMCSA regulates the amount of time a CMV driver may drive or otherwise be on duty, in order to ensure that adequate time is available to the driver for rest. A driver must accurately record his or her duty status (driving, on duty not driving, off duty, sleeper berth) at all points during the 24-hour period designated by the motor carrier (49 CFR 395.8(a)(1)). This record of duty status (RODS) must be made on a specified grid (Section 395.8(g)). The term ''logbook'' is often used in the industry to denote the collection of the most recent RODS of the driver. A driver must have the RODS for the previous 7 consecutive days in the CMV at all times (Section 395.8(k)(2)). The RODS must be submitted to the motor carrier along with any supporting documents, such as fuel receipts and toll tickets, that could assist in verifying the accuracy of entries on the RODS. The HOS rules do not require motor carriers to submit this information to FMCSA. However, motor carriers must retain these records for a minimum of 6 months from the date of receipt and make them available to enforcement officials upon request (Section 395.8(k)(1)). The HOS rules provide three methods of recording driver duty status:

(1) *Paper RODS:* This grid form requires the driver to graph time and location on a paper record over a 24-hour period (Section 395.8(g)). It must be present on the CMV in the absence of a regulatory exception.

(2) *Time Record:* ''Short haul'' CMV drivers do not have to maintain a RODS onboard the vehicle if their motor carrier maintains a time record showing for each duty day when driver reported for duty, when he or she was released from duty, and the total hours on duty (Section 395.1(e)).

(3) *Automatic On-Board Recording Device (AOBRD):* An electronic record is permitted if it is created and maintained by an AOBRD as defined by Section 395.2. The record must include all the information that would appear on a paper log, and the driver or carrier must be capable of producing this information upon demand.

On March 28, 2014, the Agency published a supplemental notice of proposed rulemaking proposing rules that would require motor carriers to use on-board technology to record their HOS regulations, and seeking public comment on them (79 FR 17656). This rulemaking does not affect this ICR because compliance with the final rule, when published, will not be required until after the 3-year timeframe of this PRA estimate.

As a condition of receiving certain federal grants, States agree to adopt and enforce the FMCSRs, including the HOS

rules, as State law. As a result, State enforcement inspectors use the RODS and supporting documents to determine whether CMV drivers are complying with the HOS rules. In addition, FMCSA uses the RODS during on-site compliance reviews (CRs) and targeted reviews of motor carriers. In addition, Federal and State courts rely upon the RODS as evidence of driver and motor carrier violations of the HOS regulations. This information collection supports the DOT's Strategic Goal of Safety because the information helps the Agency ensure the safe operation of CMVs in interstate commerce on our Nation's highways.

The PRA burden estimate is currently 184.38 million hours, approved by OMB on December 11, 2011. The expiration date of this ICR is December 31, 2014. Through this ICR, FMCSA requests a revision of the paperwork burden of 2126–0001. The Agency requests a reduction in the burden hours based on two program adjustments and is not the result of amendments of the HOS rules. The program adjustments are: (1) A lower estimate of the number of CMV drivers who are subject to the HOS rules; and (2) an estimate of the burden reduction experienced by those CMV drivers voluntarily using electronic HOS technology. First, the Agency reduces its estimate of the number of drivers subject to the HOS recordkeeping requirements from 4.6 million to 2.84 million. Second, FMCSA estimates that 10% of drivers currently are obtaining burden reductions because they use electronic HOS technology.

On June 24, 2014, FMCSA published a **Federal Register** notice allowing for a 60-day comment period on this ICR. The agency received no comment in response to that notice.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: September 5, 2014.

G. Kelly Regal,

Associate Administrator, Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2014–21781 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Innovative Public Transportation Workforce Development Program (Ladders of Opportunity Initiative)

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Funding Availability; withdrawal.

SUMMARY: This action withdraws an FTA notice of funding availability (NOFA), Innovative Public Transportation Workforce Development Program Ladders of Opportunity Initiative, published in the **Federal Register** on September 5, 2014 (79 FR 53095). FTA will issue a revised NOFA for this program.

DATES: *Effective* September 12, 2014.

FOR FURTHER INFORMATION CONTACT: Betty Jackson, Workforce Development Program Manager, Office of Research, Demonstration and Innovation, phone: (202) 366–1730, fax: (202) 366–3765, or email: *betty.jackson@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

Background

On September 5, 2014, FTA published an Innovative Public Transportation Workforce Development Program (Ladders of Opportunity Initiative) Notice of Funding Availability (NOFA) (79 FR 53095). The NOFA indicated that FTA was making FY 13 and prior year funds available for this effort. FTA intends to make additional funds available, providing a consolidated way for potential applicants to seek funding. Since this additional funding may have a bearing on whether a potential applicant decides to apply for funds, FTA has determined the best course of action is to withdraw the NOFA and issue a revised NOFA.

The Withdrawal

In consideration of the foregoing, the NOFA for Innovative Public Transportation Workforce Development Program (Ladders of Opportunity Initiative) is hereby withdrawn.

Therese W. McMillan,

Acting Administrator.

[FR Doc. 2014–21899 Filed 9–10–14; 4:15 pm]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2014–0017]

Pipeline Safety: Construction Notification

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: PHMSA is issuing this advisory bulletin to all owners and operators of gas and hazardous liquid pipelines to provide further clarification regarding the notification(s) required prior to certain construction-related events.

PHMSA needs to be aware of certain construction-related events to have sufficient time to schedule reviews of pipeline construction plans and inspections. Moreover, timely construction plan reviews and inspections by PHMSA could help operators avoid costly modifications, repairs and/or additions to achieve compliance with the Federal pipeline safety regulations. Accordingly, PHMSA strongly encourages operators to provide the required construction-related notification(s) not later than 60 days prior to whichever of the following activities occurs first: Material purchasing and manufacturing; right-of-way acquisition; construction equipment move-in activities; onsite or offsite fabrications; or right-of-way clearing, grading and ditching.

PHMSA also strongly encourages operators to provide the required notification(s) for the construction of 10 or more miles of a new pipeline for a pipeline that: (1) Did not previously exist; and (2) for the replacement of 10 or more contiguous miles of line pipe in an existing pipeline.

FOR FURTHER INFORMATION CONTACT: For any questions about this Advisory Bulletin, contact the appropriate PHMSA Regional Office of Pipeline Safety as follows:

- Central Region: 816–329–3800 Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin
- Eastern Region: 609–989–2171 Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West

Virginia
- Southern Region: 404–832–1147
  Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee
- Southwest Region: 713–272–2859
  Arkansas, Louisiana, New Mexico, Oklahoma, and Texas
- Western Region: 720–963–3160
  Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming

Intrastate pipeline operators should contact the appropriate state pipeline safety authority. A list of state pipeline safety authorities is provided at: *www.napsr.org.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal gas pipeline safety regulations in 49 CFR 191.22(c)(1) state:

''(c) *Changes.* Each operator of a gas pipeline, gas pipeline facility, LNG plant or LNG facility must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at *http://opsweb.phmsa.dot.gov* of certain events.

(1) An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs:

(i) Construction or any planned rehabilitation, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs $10 million or more. If 60 day notice is not feasible because of an emergency, an operator must notify PHMSA as soon as practicable;

(ii) Construction of 10 or more miles of a new pipeline; or

(iii) Construction of a new LNG plant or LNG facility.''

Similarly, the federal hazardous liquid pipeline safety regulations in § 195.64(c)(1) state:

(c) *Changes.* Each operator must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at *http://opsweb.phmsa.dot.gov,* of certain events.

(1) An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs:

(i) Construction or any planned rehabilitation, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs $10 million or more. If 60 day notice is not feasible because of an emergency, an operator must notify PHMSA as soon as practicable;

(ii) Construction of 10 or more miles of a new hazardous liquid pipeline; or

(iii) Construction of a new pipeline facility.''

When PHMSA issued the rules adding these notification requirements, we noted that the dynamic nature of the transportation pipeline network makes tracking emerging safety issues a significant challenge for PHMSA. This dynamic nature of pipeline and pipeline facility construction is due to the use of new technologies and automated control systems, new high-strength steels, and new welding and construction procedures and practices among other things.

Accordingly, to facilitate better tracking of construction, we need to become aware of certain construction-related events in sufficient time to allow for the timely scheduling of pipeline construction reviews and inspections. PHMSA has observed that further clarification may help avoid any confusion as to when to make the required notifications and help ensure that operators' projects are not delayed as a result of notifications being submitted too late for PHMSA's scheduling purposes.

II. Advisory Bulletin (ADB–2014–03)

To: Owners and Operators of Gas and Hazardous Liquid Pipeline Systems.

Subject: Construction Notification.

Advisory: Sections 191.22(c)(1) and 195.64(c)(1) require a pipeline operator to notify PHMSA not later than 60 days before certain ''construction'' related events occur. PHMSA did not specifically define the term ''construction'' in the codes. This may be somewhat challenging for pipeline operators attempting to determine when 60 days before a construction related event occurs for reporting purposes.

PHMSA wants to ensure that operators understand how the earliest possible notification to PHMSA of construction related events is beneficial to both PHMSA and the operator. PHMSA also recognizes that the determination of whether a pipeline operator has complied with the reporting regulations in these codes must be determined on a case-by-case basis with regards to the specific facts of each project and with regards to the code language.

Accordingly, PHMSA strongly encourages operators to provide the required notification(s) not later than 60 days prior to whichever of the following construction-related activities occurs first: Material purchasing and manufacturing; right-of-way acquisition; construction equipment move-in activities; onsite or offsite fabrications; or right-of-way clearing, grading, and ditching. That is, pipeline operators should notify PHMSA 60 days prior to whichever of these activities would occur first on the operator's specific project. Additionally, PHMSA believes operators should provide the required notification(s) for the ''construction of 10 or more miles of a new pipeline'' for (1) a pipeline that did not previously exist and (2) for the replacement of 10 or more contiguous miles of line pipe in an existing pipeline. While the notification prior to the first occurring construction-related activity is strongly encouraged and will benefit both PHMSA and the operator, these activities may not necessarily represent the commencement of construction for purposes of triggering the minimum 60-day notice period in the regulations subject to enforcement by PHMSA.

Authority: 49 U.S.C. Chapter 601 and CFR 1.97.

Issued in Washington, DC, on September 9, 2014.

Alan K. Mayberry,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2014–21782 Filed 9–11–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an agent for consolidated group and Revenue Procedure 2002–43, Determination of a Substitute Agent for a Consolidated Group.

DATES: Written comments should be received on or before November 12, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of regulations should be directed to Gerald J. Shields, LL.M., 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Gerald.J.Shields@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Agent for Consolidated Group.

OMB Number: 1545–1699.

Regulation Project Number: TD 9002.

Abstract: The information collection is needed in order for a terminating common parent of a consolidated group to designate a substitute agent for the group and receive approval of the Commissioner, or for a default substitute agent to notify the Commissioner that it is the default substitute agent, pursuant to Treas. Reg. § 1.1502–77(d) . The Commissioner will use the information to determine whether to approve the designation of the substitute agent (if approval is required) and to change the IRS's records to reflect the information about the substitute agent. Final regulations (67 FR 43538) were published in the **Federal Register** on June 28, 2002.

Revenue Procedure Number: 2002–43.

Abstract: Revenue Procedure 2002–43, Determination of a Substitute Agent for a Consolidated Group, provides any instructions that apply to any designation of a substitute agent, notification of the existence of a default substitute agent, a request for the designation of a substitute agent, and request for replacement of a previously designated substitute agent. The instructions also provide for the automatic approval of requests by a terminating common parent to designate its qualifying successor as a substitute agent.

Current Actions: There is no material change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 3, 2014.

Christie Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–21825 Filed 9–11–14; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 79 Friday,

No. 177 September 12, 2014

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx and Revised Distinct Population Segment Boundary; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2013–0101; 4500030114]

RIN 1018–AZ77

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx and Revised Distinct Population Segment Boundary

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, are finalizing two actions with this rule: We are designating revised critical habitat for the contiguous United States distinct population segment of the Canada lynx (*Lynx canadensis*) under the Endangered Species Act of 1973, as amended, and we are revising the boundary of the Canada lynx distinct population segment. These revisions fulfill our obligations under two settlement agreements and address issues raised by two courts regarding our previous critical habitat designation. This rule revises critical habitat for the lynx and extends the Endangered Species Act's protections to the species wherever it occurs in the contiguous United States, including New Mexico. The effect of this regulation is to conserve the Canada lynx and its habitats in the contiguous United States under the Endangered Species Act.

DATES: This rule becomes effective on October 14, 2014.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* and *http://www.fws.gov/mountain-prairie/species/mammals/lynx/index.htm.* Comments and materials we received, as well as some supporting documentation we used in preparing this final rule, are available for public inspection at *http://www.regulations.gov.* 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, Montana Ecological Services Field Office, 585 Shepard Way, Suite 1, Helena, MT 59601; telephone 406–449–5225.

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–R6–ES–2013–0101, and at the Montana Ecological Services Field Office (*http://www.fws.gov/montanafieldoffice/* (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jodi Bush, Field Supervisor, U.S. Fish and Wildlife Service, Montana Ecological Services Field Office, 585 Shepard Way, Suite 1, Helena, MT 59601; telephone 406–449–5225. 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 revise the designation of critical habitat for the contiguous United States distinct population segment (DPS) of the Canada lynx (*Lynx canadensis*). Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA or 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. This rule also rescinds the existing State-boundary-based definition of the lynx DPS and replaces it with a definition that extends the Act's protections to lynx ''where found'' in the contiguous United States. This change ensures that lynx, which are known for their long-distance dispersal capability and tendency to occur in places well outside of typical habitats, receive the Act's protections wherever they occur in the contiguous United States, including (but not limited to) New Mexico.

On March 24, 2000, we, the U.S. Fish and Wildlife Service (Service), listed the contiguous United States DPS of the Canada lynx as threatened in 14 States (65 FR 16052). On September 26, 2013, we published in the **Federal Register** a proposed rule to rescind the State-boundary-based definition of the lynx DPS and to revise the critical habitat designation for the lynx DPS (78 FR 59430). 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 lynx in the contiguous United States. Here we are designating approximately 38,954 square miles (mi^2) (100,891 square kilometers (km^2)) of critical habitat in five units in the States of Idaho, Maine, Minnesota, Montana, Washington, and Wyoming.

This rule consists of: (1) Replacement of the existing State-boundary-based definition of the range of the lynx DPS with a definition that extends the Act's protections to lynx ''where found'' in the contiguous United States, and (2) a final designation of revised critical habitat for the contiguous United States DPS of the Canada lynx.

We have prepared an economic analysis of the designation of critical habitat. To consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designations and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on June 20, 2014 (79 FR 35303), allowing the public to provide comments on our analysis. In this rule, we have responded to comments we received on the economic analysis (see Summary of Comments and Recommendations section, below).

We have prepared a National Environmental Policy Act analysis. Because this rule designates critical habitat in States within the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we prepared an analysis in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We announced the availability of the draft environmental assessment in the **Federal Register** on June 20, 2014 (79 FR 35303), allowing the public to provide comments on our assessment. We have incorporated the comments and have completed the final environmental assessment and finding of no significant impact (FONSI) concurrently with this final determination.

Peer review and public comment. We sought comments from appropriate and independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from four knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, and

whether or not we had used the best available information. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final revised designation. We also considered all comments and information received from States, Tribes, Federal agencies, and the public during the comment periods.

Previous Federal Actions

For more information on previous Federal actions concerning the lynx DPS, refer to the final listing rule published in the **Federal Register** on March 24, 2000 (65 FR 16052), the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076), the *Recovery Outline for the Contiguous United States DPS of Canada Lynx* (recovery outline; U.S. Fish and Wildlife Service 2005, entire), the final rule designating critical habitat for lynx published in the **Federal Register** on November 9, 2006 (71 FR 66008), the final rule designating revised critical habitat published in the **Federal Register** on February 25, 2009 (74 FR 8616), the 12-month finding on a petition to change the final listing of the DPS of the Canada lynx to include New Mexico published in the **Federal Register** on December 17, 2009 (74 FR 66937), and the proposed rule to revise the designation of critical habitat and the boundary for the lynx DPS published in the **Federal Register** on September 26, 2013 (78 FR 59430). These documents and others addressing the status and conservation of lynx in the contiguous United States may be viewed and downloaded from the Service's Web site: *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A073.*

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the lynx DPS during two comment periods. The first (90-day) comment period associated with the publication of the proposed rule (78 FR 59430) opened on September 26, 2013, and closed on December 26, 2013. We also requested comments on the proposed critical habitat designation and associated draft economic analysis and draft environmental assessment during a 30-day comment period that opened June 20, 2014, and closed on July 21, 2014 (79 FR 35303). We held a public hearing in Helena, Montana, on November 25, 2013. We also contacted appropriate Federal, State, Tribal, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule, the economic analysis, and the draft environmental assessment during these comment periods.

During the first comment period, we received 169 comment letters directly addressing the proposed critical habitat designation (one of which also included approximately 600 identical or nearly identical one-page form letters). During the second comment period, we received 15 comment letters (one of which transmitted 1,999 identical or nearly-identical one-page form letters) addressing the proposed critical habitat designation, the draft economic analysis, and/or the draft environmental assessment. During the November 25, 2013, public hearing, two individuals or organizations made comments on the proposed designation of critical habitat for the lynx DPS. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received were grouped into 49 general issues specifically relating to the proposed critical habitat designation for the lynx DPS, 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 five appropriate and independent specialists with scientific expertise that included familiarity with the species, the geographic regions in which the species occurs, and conservation biology principles. We received responses from four peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the lynx DPS. The peer reviewers generally concurred with our methods, use of available scientific information, application of biological and ecological principles, and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Several peer reviewers noted the challenges, given information gaps and the natural vagaries of lynx and snowshoe hare (*Lepus americanus*) population dynamics and habitats, in developing criteria to delineate critical habitat. Several also suggested that other areas should be considered or included in the designation. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer suggested that the Primary Constituent Element (PCE) for lynx critical habitat should include a landscape- or home range-scale snowshoe hare density threshold rather than the ''presence of snowshoe hares and their preferred habitat conditions'' as defined in the proposed rule. The reviewer felt that the proposed rule lacked clarity regarding what constitutes ''low'' (or ''high'') hare densities and suggested that the Service develop working definitions of those terms to be applied at the scale of the landscape or home range.

Our Response: We appreciate the potential advantages of using landscape-scale hare density as a component of the PCE. However, the available literature does not allow us to determine minimum snowshoe hare densities necessary to maintain lynx populations across the range of the DPS. Additionally, thresholds of hare density needed to support lynx populations likely differ between the western, Great Lakes, and northeastern parts of the DPS range, and the core range of Canada and Alaska, because of significant differences in habitat quality, quantity, and spatial arrangement; climate; magnitude and periodicity of hare cycles; presence, diversity, and density of competing hare predators; and relative connectivity of DPS populations with the core population in Canada. In the proposed rule (78 FR 59440) and in this final rule (Critical Habitat section, below), we present information, where available (Maine and Minnesota), regarding the differences in hare densities between areas that support lynx populations and areas that do not. However, we do not believe it would be appropriate to apply these densities as thresholds elsewhere within the range of the DPS, especially because it appears that lynx populations in some areas (e.g., the Greater Yellowstone Area and the Northern Cascades) persist despite relatively lower hare densities while other areas with higher densities of hares, at least in some places in some years, do not support lynx populations (e.g., the Kettle/Wedge area of northeastern Washington). Therefore, at this time, we do not believe that a scientifically defensible definition of a minimum hare density exists at any scale or that one should be applied as a component of the PCE for lynx critical habitat across the range of the DPS.

(2) *Comment:* Two peer reviewers felt that our analysis of the potential effects of climate change on lynx emphasized

reductions in snowfall but said little about other potential effects. One reviewer suggested that we include more discussion of the potential effects of climate change on spruce-fir forest distribution and provided citations that suggest these forests, particularly in the Northeast, may be susceptible to climate change, and that spruce-fir forests could disappear from New England and much of the upper Great Lakes region due to drought, thermal stress, increased competition from other tree species, decreased regeneration success, and increased susceptibility to pathogens and other forest insects. Given the importance of regenerating spruce-fir forests to snowshoe hares and lynx, this reviewer believed that the climate-induced northward contraction of the range of spruce-fir forests is a threat to the conservation of the lynx DPS. The other peer reviewer felt the climate effects section was too narrow in scope because it did not address the effects of climate change on alternate prey and the behavioral flexibility of lynx to use alternate prey as climate change progresses.

Our Response: We agree that climate change is projected to cause a northward contraction of spruce-fir forests within the range of the DPS with potential negative consequences for both lynx and snowshoe hares. We have evaluated the sources provided by the reviewer and added a discussion of potential impacts of climate change on spruce-fir forests to our *Climate Change* section, below (also see our response to comment (18), below). We also agree that climate change could exert pressure on lynx to rely to a greater extent on alternate prey if it reduces future landscape-scale snowshoe hare densities. However, although alternate prey may be relatively more or less important to lynx seasonally and geographically (Aubry *et al.* 2000, p. 373), we are aware of no lynx populations that persist in areas where prey other than snowshoe hares contribute a majority of the biomass of the lynx diet. If climate change results in landscape-scale reductions in hare densities, some areas that currently support lynx populations may become less capable of doing so, and lynx could decline or disappear from these areas regardless of the diversity or abundance of alternate prey species. Such climate-induced impacts to hare habitats and populations could be accompanied by projected reductions in snow quantity, quality, and duration, thereby reducing the competitive advantage lynx have over other hare predators in the areas that currently support lynx populations. This would further diminish the likelihood that lynx could persist in areas of reduced hare density by switching to alternate prey, and lynx populations are unlikely to persist in areas where such a switch would be necessary over the long term.

(3) *Comment:* One peer reviewer supported our proposed additions of the Van Buren and Herseytown-Staceyville areas to lynx critical habitat in Maine but disagreed with our determination that western Maine (south of the area designated in this final rule) does not contain the physical and biological features necessary to sustain lynx over time and is, therefore, not essential to lynx conservation. This reviewer (a) questioned our general characterization that spruce-fir forest is a lower percentage of the landscape in western than in northern Maine and noted that balsam fir (*Abies balsamea*) volumes are estimated to be higher in some parts of western Maine than in northern Maine areas designated as critical habitat; (b) contends that, although there currently is less high-quality hare habitat in western than in northern Maine, such habitats (and, therefore, hare densities) are expected to increase in western Maine over the next 25 years while concurrently decreasing in northern Maine; (c) believes that western Maine meets many if not all of the same criteria we used in determining that the Van Buren and Herseytown-Staceyville areas warrant designation as critical habitat; and (d) hypothesizes that western Maine may increase in importance to lynx conservation given the potential for higher elevations to moderate climate change effects on snow accumulation in the Northeast.

Our Response: The latest modeling from University of Maine School of Forestry Resources indicates that the composition of Maine's northern forest will be influenced by complicated interactions between spruce budworm outbreaks and their severity, salvage forestry related to budworm outbreaks, other trends in forest management and land ownership, and climate change (Legaard *et al.* 2013 *Unpublished Report,* entire). Some projections predict a transition to a forest of more mixed composition, and especially the expansion of balsam fir (a significant component of hare/lynx habitat) on about 18 percent of the northern Maine forest (Simons-Legaard *et al.* 2013a, p. 12). This prediction is in contrast to broad predictions that spruce and fir will decline because of climate change (Iverson *et al.* 2008, pp. 400, 404). Although a trend toward expanding balsam fir (in area and timber volume) is evident in northern Maine, the modeling in the papers cited by the peer reviewer does not include western Maine. The same trends may occur there; however, this cannot be inferred from the cited studies.

Although spruce and balsam fir occur in western Maine, the quality of habitat they provide for hare and lynx depends on the size and distribution of the patches and the age of the stands. The information the reviewer cites from McCaskill *et al.* (2011, p. 25) indicates that the average balsam fir volume/acre is greatest in Franklin County (a western Maine county), but much lower in Oxford County next to New Hampshire. However, McCaskill *et al.* (2011) provide information on only the volume/acre and not the age, patchiness, and aerial extent of spruce-fir-dominated stands. An alternative explanation for high fir volume in Franklin County is that forests are more mature in western Maine where forest management may be less intense than in northern Maine and a higher proportion of the land is in small woodlot ownership.

Maps of the balsam fir volume in McCaskill *et al.* (2011, p. 25) show a particularly high volume in the Rangeley and Flagstaff Lakes region, where stands may be more mature because land parcels in these areas are typically small and privately owned, or because large areas are in State conservation ownership. Further north, especially along the Maine-Quebec border, stands may be more mature and have higher volume because of forest management practices of Maine Tribes. Balsam fir volume/acre for Somerset and Piscataquis Counties (about 40 percent of the area designated as critical habitat) are third and fourth highest in the State, respectively. However, the only area of high balsam fir volume on the map for the core lynx critical habitat area is in Baxter State Park, where stands are mature due to protection.

Balsam fir volume/acre for Aroostook County (about 50 percent of the area designated as critical habitat) is the second highest in the State, yet no single area stands out on the map as having a particularly high volume, except a thin strip along the Route 11 corridor north of Ashland, where stands may be more mature because land parcels are small and privately owned. Thus, absent the context of areal extent, spatial arrangement, and stand age, and how they relate to hare and lynx habitat quality, we conclude balsam fir volume/acre alone may not be a good surrogate for lynx habitat and does not justify the inclusion of western Maine within this final critical habitat designation.

In the proposed rule and this final rule, we acknowledge the expected decline in hare habitat in northern Maine resulting from the shift in timber harvest practices from clearcutting to partial harvesting and the seral succession of regenerating clearcuts, which currently produce high hare densities, to more mature stands that will support fewer hares. We agree that hare densities may increase in parts of western Maine over the next several decades while they are likely to decrease in parts of northern Maine. However, we are not convinced this change will result in increases in landscape-scale hare densities in western Maine or that western Maine will become essential to the persistence and conservation of lynx populations in Maine. First, if rates of harvest were the same in western as they were in northern Maine in the 1990s and 2000s, the amount of young forest created would be expected to be similar. Second, no information is provided on the extent, size, and type of cuts in western Maine, which are important factors for predicting the quality of future habitat. Third, because partial harvesting was the predominant form of forestry in the 1990s and 2000s, the regenerating young forest would be expected to support lower landscape-scale hare densities in both regions relative to the high hare densities that resulted from the extensive clearcutting of the 1970s and 1980s. And fourth, because the conifer-dominated habitats in western Maine are believed to be patchier and less contiguous than in northern Maine, landscape-scale hare densities in western Maine would be expected to be lower and less able to support lynx populations over time.

Additionally, a study suggesting a possible southwesterly shift in lynx habitat (Simons 2009, pp. 153–163) was conducted in a 2,500-mi^2 (6,475-km^2) area that is in the southwest corner of the designated critical habitat and that extends only as far south as Moosehead Lake. The study did not include western Maine, and the analysis has not been extended to western Maine or to more northern portions of the critical habitat area. Consequently, the study does not address whether the habitat is more fragmented and patchy in western Maine. Simons (2009, pp. 162–163) acknowledges that, although snowshoe hare habitat may shift southward, the potential for lynx densities to increase in western Maine may be constrained by extrinsic factors including higher populations of bobcat (*Lynx rufus;* a competitor) and fisher (*Martes pennanti;* a competitor and predator), and less suitable snow conditions.

We agree that, as with western Maine, survey information is inadequate to confirm lynx reproduction in the Van Buren and Herseytown-Staceyville areas where we have designated critical habitat. Although we are not using reproduction as a proxy for presence of the PCE, we believe that our analysis in the proposed rule supporting lynx occurrence in the Van Buren and Herseytown-Staceyville areas (78 FR 59456) also supports the likelihood of lynx reproduction in these areas, which is indicative of the value of the area to the conservation of the species. We also acknowledge the low probabilities of lynx occurrence predicted for both the Van Buren unit (which we have designated) and western Maine (which we have not) by the Hoving *et al.* (2004) model, and the higher probabilities predicted for both areas by the Hoving *et al.* (2005) model. However, we do not find either of these models to be definitive in predicting lynx occurrence because they are derived from lynx survey and forest conditions from 1994–1999, and habitat conditions are constantly changing. Even the more sensitive model (Hoving *et al.* 2005) does not predict lynx occurrence in several areas currently known to support lynx. We also note that the Hoving *et al.* (2005) model predicts small, isolated pockets of fragmented, lower quality habitat in western Maine, unlike the more contiguous habitat in northwestern Maine, the Gaspe region of Quebec, and northern New Brunswick.

We agree with the reviewer that lynx occurred in western Maine historically and that lynx have found their way to areas of suitable landscape-scale hare density in western Maine (as well as New Hampshire and Vermont). However, while we recognize that lynx currently occur in western Maine, we believe this area supports lynx only in low numbers because of the patchy distribution of suitable habitat. Lynx occupancy there appears to be in small, isolated pockets of habitat, and lynx do not seem to be occupying the high-elevation spruce-fir stands in western Maine, (although these areas have been poorly surveyed). We question whether the ''habitat islands'' of conifer habitat at high elevations that may remain in the future will be large enough and close enough to each other to maintain lynx home ranges. Additionally, as snow quantity, quality, and duration will likely decrease due to climate change, bobcats will occur at lower elevations and could shift their home ranges to higher elevations in summer, further reducing the probability that a lynx population could persist in western Maine.

For the reasons above, we do not agree that western Maine has the physical and biological features essential to lynx in adequate quantity or spatial arrangement to support a lynx population over time or that western Maine is essential to the conservation of the DPS. Therefore, we have not designated critical habitat for lynx in western Maine.

(4) *Comment:* One peer reviewer felt the Service used reasonable methods in developing the proposed critical habitat designation and that our approach was consistent with conservation biology theory addressing the dynamics of small populations supported by patchy and temporal habitats. The reviewer felt that all the information necessary to understand how we used the available data to inform our designation were contained in the proposed rule, but that it remained difficult to understand how all the information fit together in a larger way to define the distribution of the PCE and derive the proposal for critical habitat. The reviewer suggested that a challenge remains to explain the process more clearly to the public.

Our Response: We agree that it is a challenge to clearly explain the unique and complex relationships between habitat characteristics and lynx and how they influence our efforts to designate critical habitat. Our goal is to distinguish between areas that contain the physical and biological features (PBFs) essential to the conservation of the DPS in adequate quantity and spatial arrangement from other areas that may appear to contain some or all of the PBFs and in which lynx may occur occasionally but which are incapable of supporting lynx populations over time. In this rule, we explain why evidence of a landscape's ability to provide for the conservation of lynx over time is a valid and necessary biological consideration (though not the only criterion we evaluate) and why we believe it is absolutely imperative to rely on verified data and not anecdotal information when assessing the historic record of lynx occurrence and distribution (also see our response to comment (23), below). We also try to explain the limitations in our ability to accurately map lynx and hare habitats across the range of the DPS and to establish range-wide criteria for minimum hare densities; snow depth, quality, and duration; and other habitat variables, and how these limitations prevent a reasonable and accurate range-wide mapping of the individual PBFs essential to conservation of the DPS. Finally, we try to better explain how

designating areas that appear to have some or all of the PBFs in some measure would likely result in the designation of large areas that have never supported lynx other than occasional transient/dispersing individuals and that are very unlikely to ever support lynx populations regardless of designation and management regime.

(5) *Comment:* One peer reviewer commented that, although our methods for determining lynx habitat requirements and the distribution of habitats containing the PCE were reasonably well explained, we did not provide sufficient detail regarding how we used available and limited information including geographical information system (GIS) coverages of forest and habitat types, snow depth, and topographic information. Other commenters also requested clarification regarding how we used snowfall and topographic considerations when delineating proposed critical habitat.

Our Response: To a great extent, the Service relied on lynx habitat data and information compiled by our partner Federal and State agencies, most of which mapped lynx habitats on their management units in accordance with information developed by the Interagency Lynx Biology Team and articulated in the Lynx Conservation Assessment and Strategy (LCAS; Ruediger *et al.* 2000, entire). This information generally consisted of maps depicting cool, moist boreal or subalpine forests that support snowshoe hares and receive deep, powdery and persistent snow across landscapes large enough to support multiple lynx home ranges. We overlaid these areas with the geographic area occupied by lynx populations at the time of listing based on verified occurrence data. Although snow depth is thought to influence lynx distribution, other factors including snow consistency and persistence are also likely important, and we do not have enough information to support using thresholds for annual snowfall to delineate lynx critical habitat. Therefore, although snow conditions were a consideration, we did not establish or alter critical habitat boundaries based on specific thresholds for average annual snowfall, duration, or consistency. In critical habitat units 3 (Northern Rockies) and 4 (North Cascades), the majority of lynx records and the boreal forest types containing the features essential to lynx generally are found above 4,000 feet (1,219 meters). Therefore we limited critical habitat in these units to areas above this elevation, except in unit 3: (a) East of the Continental Divide, where that elevation encompasses substantial areas of grasslands that do not contain the PBFs essential to lynx, and (b) in areas where site-specific information indicated that the PBFs occurred and other criteria were met at lower elevations.

(6) *Comment:* One peer reviewer requested that the Service better articulate why denning and matrix habitats, which are not considered limiting for lynx within the DPS at large spatial scales, are considered essential and, therefore, defined as components of the PCE.

Our Response: We agree that denning and matrix habitats are not limiting to lynx within the DPS; however, a feature or habitat variable need not be limiting to be considered an essential component of a species' habitat. Both denning and matrix habitats are essential components of landscapes capable of supporting lynx populations in the DPS because without them lynx could not persist in those landscapes. Both habitats fulfill essential lynx natural-history requirements by providing ''space for individual and population growth and for normal behavior; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distribution . . .'' of lynx in the contiguous United States.

(7) *Comment:* One peer reviewer felt the Service should better clarify the use of jurisdictional (e.g., National Forest) boundaries and highways to delineate critical habitat given that such anthropogenic features seldom fall along natural vegetation (habitat) boundaries.

Our Response: As described in our response to comment (6) above, we relied on habitat mapping and information from our partner agencies within the range of the DPS. In some cases, administrative boundaries were used because they encompassed habitats of similar type and extent within an area found to meet the criteria we developed for critical habitat. Roads and other human-made structures were used as boundaries for critical habitat where they clearly delineated areas with confirmed records of lynx and the presence of the PBFs essential to lynx.

After the lynx DPS was listed as threatened under the Act in 2000, Federal land managers mapped potential lynx habitats on their units based on criteria and recommendations developed by the Interagency Lynx Biology Team and articulated in the LCAS (Ruediger *et al.* 2000, entire). As vegetation mapping and habitat modeling have improved, some managers have initiated re-mapping of lynx habitat to better reflect actual on-the-ground habitat conditions.

In this rule, we have used the information from these habitat mapping refinements/improvements to adjust critical habitat boundaries to better reflect actual habitat conditions. This change has resulted in reduced reliance on administrative or other anthropogenic boundaries where better methods are available (revised mapping has not occurred on all land units within the range of the DPS). In particular, we used improved lynx habitat mapping to adjust critical habitat boundaries in the Idaho Panhandle National Forest and the Flathead National Forest in Unit 3 (U.S. Forest Service 2008a, entire; 2013a, entire); and in the Custer and Gallatin National Forests, Grand Teton National Park, and Bureau of Land Management (BLM) lands in the Pinedale and Kemmerer districts in Unit 5 (U.S. Fish and Wildlife Service 2013a, entire; 2013b, entire; U.S. Forest Service 2013b, entire). In both these units, some areas previously designated or proposed for designation as critical habitat were removed and other areas not previously designated or proposed were added to lynx critical habitat. The adjusted critical habitat boundaries now follow habitat features and not administrative or other anthropogenic features in all places where we had data that allowed such refinements.

(8) *Comment:* One peer reviewer felt that the benefits of critical habitat were presented generally for listed species but not specifically stated for lynx. The reviewer requested clarity regarding (a) the benefit of critical habitat to lynx, especially in the context of consultations under section 7 of the Act; (b) the difference between designated critical habitat and lynx habitat mapped in accordance with guidance in the LCAS, and whether (and if so, why) both are needed to recover lynx in the DPS; and (c) why critical habitat and ''mapped'' lynx habitat commonly depict different distributions of lynx habitat.

Our Response: Compliance with section 4(a)(3) of the Act requires that critical habitat be designated for listed species, if prudent and determinable. Although listed species and the habitats upon which they depend are protected under provisions of the Act whether critical habitat is designated or not, a critical habitat designation identifies lands on which are found the physical and biological features essential to the conservation of the species that may require special management considerations. The identification of these essential areas is important to

guide management and provide for the recovery of the species. The general benefits of critical habitat for listed species also apply to lynx. In the Consideration of Impacts under Section 4(b)(2) of the Act section below we define these benefits for lynx.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. Federal agencies must consult with the Service on discretionary actions that may affect a listed species, and in addition, analyze the effects of such actions on critical habitat. The analysis of the effects on critical habitat is a separate and different analysis from that of the effects to the species, and may provide greater regulatory benefits to the recovery of a species than listing alone. In terms of section 7 consultation, for activities with a Federal nexus in areas where lynx ''may occur,'' but which are not designated as critical habitat, the Service's evaluation focuses on the jeopardy standard—i.e., whether a project is likely to jeopardize the continued existence of the DPS. In designated areas, we must additionally evaluate whether a project is likely to result in destruction or adverse modification of critical habitat.

The difference between critical habitat and ''mapped'' lynx habitat is that critical habitat has been found to contain the physical and biological features essential to lynx in adequate quantity and spatial arrangement on the landscape to support a lynx population or subpopulation over time and, therefore, is essential to the conservation and recovery of the DPS. ''Mapped'' (or potential) lynx habitat is a tool for determining habitats in which lynx ''may be present'' (and therefore which may require consultation under section 7), regardless of whether the area is occupied by lynx or has the physical and biological features essential to its conservation. The ''may be present'' standard for consultation under section 7 is a lower bar than that for critical habitat designation, but it is required to address the possibility of adverse effects or take of lynx in areas not occupied by lynx populations but in which individual lynx may occasionally or intermittently occur as transients or dispersers.

Many areas of ''mapped'' or potential lynx habitat have no verified records of lynx occurrence, no evidence that they ever supported lynx over time, and are not essential to lynx conservation and recovery. The Service consults on Federal projects in these areas out of recognition that lynx are capable of dispersing long distances from areas that support populations and during such movements have historically occurred intermittently and temporarily in suboptimal, marginal, and unsuitable habitats that do not contain the physical and biological features essential to lynx and cannot, therefore, support lynx over time. Critical habitat is a subset of ''mapped'' habitat that we have determined is essential to conservation and recovery of the DPS. The remainder of mapped habitat may have some or all of the features lynx need, but not in adequate quantity and/or spatial arrangement to support lynx over time—therefore such areas are not essential to conservation and recovery of the lynx DPS.

(9) *Comment:* One peer reviewer found the structure of the proposed rule confusing because it proposed accomplishing two unrelated objectives: (a) Establishing that lynx will be protected where they occur and not based on State boundaries, and (b) revising the critical habitat designation for lynx in the contiguous United States.

Our Response: We have provided clarifying language in the **SUMMARY** and Executive Summary sections above.

(10) *Comment:* One peer reviewer noted that the term ''persistent population'' is difficult to define in the context of critical habitat and questioned whether the lynx population in Minnesota can be considered truly persistent given that lynx appeared to be absent from the State from about 1973 to 2003. The reviewer noted that the lynx population introduced to Colorado from 1999 through 2006 has persisted until the present, though its long-term persistence remains truly unknown. The reviewer suggested that the long-term persistence of lynx in Minnesota is similarly unknown, and that ''. . .the distinction of population persistence between Minnesota and Colorado as articulated in the proposed rule seems arbitrary, especially since there are probably many more lynx in Colorado than Minnesota.''

Our Response: We agree that defining ''persistent'' lynx populations in the contiguous United States is a challenge due to the imperfect historical record of lynx occurrence and the absence of reliable long-term monitoring data for most places. Another contributing factor is that most lynx habitat in the range of the DPS is suboptimal, patchy, and supports lower hare densities compared to the core of the lynx range in Canada and Alaska, thus creating the likelihood that there may be times, likely related to inadequate densities of snowshoe hares, when lynx may be absent or at very low numbers even in the best lynx habitat within the range of the DPS with the most compelling evidence of persistent lynx populations.

When we listed the lynx DPS as threatened in 2000, we noted that there were 76 verified records of lynx in Minnesota and 17 in Colorado as of 1999 (McKelvey *et al.* 1999a; 65 FR 16056, 16059). We noted at that time that (a) reproduction and home range maintenance documented in Minnesota in 1972 (Mech 1973, p. 152; 1980, p. 261), (b) consistent trapping records over 40 years (including during cyclic lows in lynx populations) in Minnesota and immediately adjacent habitat in Ontario that was similar and contiguous across the United States-Canada border, and (c) three verified lynx records in Minnesota in 1992–93, all provided some evidence of the existence of a resident population in Minnesota. However, we determined that the available data were insufficient to verify whether a resident lynx population existed in Minnesota historically or at the time of listing (65 FR 16056). In that rule, we also noted that ''The montane and subalpine forest ecosystems in Colorado are naturally highly fragmented (Thompson 1994), which we believe limits the size of lynx populations,'' and that the last verified lynx record was from 1974 (no verified records from 1975 to 1999) despite large-scale snow-tracking efforts (Carney 1993, *unpublished data,* as cited by McKelvey *et al.* 2000a, p. 231). We concluded at that time that there were ''few if any'' native lynx in Colorado at the time of listing (65 FR 16059).

In our 2003 remanded determination of status for the lynx DPS (68 FR 40076), we noted that, in addition to the evidence (above) suggesting the potential existence of a resident lynx population in Minnesota historically and at the time of listing, there were 62 additional verified lynx records from 2000 to 2003, including 6 that provided evidence of reproduction (68 FR 40088). In that rule, we concluded that, although Minnesota may not always support lynx, ''. . . northeastern Minnesota often supports a resident lynx population because there is ample boreal forest habitat directly connected with that in Ontario, there is a high number of historic lynx records, evidence of lynx reproduction and cyclically abundant snowshoe hares'' (68 FR 40088). In the same rule, we reemphasized the lack of compelling evidence that Colorado ever naturally supported a persistent, resident lynx population, stating ''. . .our original conclusion that the Southern Rocky Mountains supported an isolated resident lynx population may not be correct'' (68 FR 40081). We also

suggested that the few verified historic records in Colorado/the Southern Rockies may represent dispersing individual lynx that arrived during extreme highs in lynx populations to the north (68 FR 40081, 40091). We concluded that, if there ever had been a resident population in Colorado, a viable resident population no longer existed there and the loss of a population (if one ever existed) would most likely have been the result of natural processes because the distance and isolation of Colorado and the Southern Rockies from source populations severely reduced, if not entirely precluded the immigration that was likely necessary for a lynx population of this region to sustain itself (68 FR 40091).

We do not find support for the statement that lynx were absent from Minnesota from 1973 through 2003. Mech (1980, entire) reported trapping 37 lynx between 1972 and 1978, including one female that showed evidence of reproduction and nursing, and he also examined the carcasses of 32 other lynx trapped in Minnesota during that time. The continued occurrence of lynx in Minnesota in the late 1970s and early 1980s was supported by State records of 161 lynx harvested in the period 1977–1983 (McKelvey *et al.* 2000a, p. 223). There were only three verified lynx records in Minnesota from 1984 to 1999, but lynx harvest was closed in 1984 and no surveys or research to document lynx presence, absence, or population trend occurred during this time period (65 FR 16056).

In contrast, there are no verified records of lynx in Colorado between 1937 and 1968; single records in 1969 and 1972; and two records in 1974 (McKelvey *et al.* 2000a, p. 231), despite the unprecedented ''explosions'' (irruptions) of lynx into the northern contiguous United States in the early 1960s and again in the early 1970s (McKelvey *et al.* 2000a, pp. 219, 242). Trapping of lynx was permitted in Colorado until 1970 and would likely have reflected the presence of lynx in the State if they had been there. After 1974, and despite large-scale snow-tracking efforts (Carney 1993, *unpublished data,* as cited by McKelvey *et al.* 2000a, p. 231), there are no verified lynx records in Colorado until 1999 (McKelvey *et al.* 2000a, p. 231), when the State initiated its lynx translocation effort. The 2000 LCAS concurred with McKelvey *et al.* (2000a, p. 231) that no lynx specimens exist for Colorado from 1974 to 1999 (Ruediger *et al.* 2000, p. 4–14), but suggested that other records indicate a small number of lynx may have been present during that time (Ruediger *et al.* 2000, p. 4–14—4–15). However, the reports upon which Ruediger *et al.* based their assessment (Halfpenny and Miller 1981; Halfpenny *et al.* 1982; Thompson and Halfpenny 1989, 1991; Andrews 1992; Carney 1993) were also available to and considered by McKelvey *et al.* (2000a, pp. 230–231), and the reported lynx occurrences were found to be unverified and, therefore, anecdotal. We consider McKelvey *et al.* (2000a, entire) the best available information regarding the historical distribution of lynx based on verified occurrence data. We also concur with McKelvey *et al.* (2008, entire) regarding the imperative need to rely only on verified data when evaluating historical and current ranges of rare and elusive species like lynx. In that peer-reviewed paper, the authors provide case studies of the kinds of errors and conservation consequences that can occur if anecdotal (unverified) data are relied upon for such species. In fact, they provide as an example the potential errors that could occur if bobcats were mistakenly identified anecdotally as lynx only 1 percent of the time (McKelvey *et al.* 2008, pp. 553–554). Therefore, based on our assessment of the information above, we conclude that there is no reliable evidence that lynx were able to establish and maintain populations in Colorado or elsewhere in the Southern Rockies for much of the past century.

The best available information suggests that northeastern Minnesota has historically supported and currently supports a naturally resident and persistent lynx population, indicating that this area contains the physical and biological features essential to lynx in adequate quantity and spatial arrangement to support a lynx population over time. Therefore, it meets our definition of critical habitat. Conversely, verified evidence suggests that Colorado (as well as southern Wyoming, northeastern Utah, and northern New Mexico) did not historically support a naturally resident lynx population over time. Although this does not prove the absence (or disprove the potential presence) of the PCE from all parts of the Southern Rockies, it is one piece of evidence which suggests that these areas may not contain the physical and biological features essential to the conservation of lynx in adequate quantity and spatial arrangement to support a lynx population over time. As explained in more detail below, as well as in our response to comments (11) and (23), and in the ''*Application of the Criteria to the Southern Rocky Mountains and Certain National Forests in Idaho and Montana''* section of this final rule, we have determined that the historic record of lynx occurrence and the available information on the quantity and distribution of lynx habitat and hare densities all combine to suggest that the Southern Rockies do not contain the PCE. Therefore, these areas do not meet our definition of critical habitat.

We agree with the reviewer that the future persistence of lynx populations in Minnesota and Colorado is uncertain. However, the extensive boreal forest habitat in northeastern Minnesota, which is directly connected to similar and very extensive habitat and a persistent lynx population in immediately adjacent Ontario, supports our conclusion that future lynx persistence is more likely in Minnesota than in the patchy, marginal, and disjunct habitats in Colorado, which are isolated from other lynx habitats by more than 90 mi (150 km) of unsuitable lower-elevation habitats (McKelvey *et al.* 2000a, p. 230). We acknowledge that the Colorado population has persisted from its 1999–2006 introduction until the present. We believe that this short-term persistence is not surprising given that the translocation of a large number of healthy lynx from Alaska and Canada over several consecutive years, which were held in captivity and brought into prime health through supplemental feeding prior to their release into Colorado, is much different than the likely intermittent historical arrival of a much smaller number of potentially less-fit lynx in the Southern Rockies that were likely dispersing away from food shortages associated with cyclic hare population crashes to the north. We also concur with the conclusions of Colorado Parks and Wildlife (CPW), which acknowledged that the future persistence of the introduced population is uncertain and hinges on the assumption that patterns of annual reproduction and survival observed as of 2010 repeat themselves during the next 20 or more years (Shenk 2008, p. 16; Shenk 2010, pp. 2, 5–6, 11).

Despite the persistence of the introduced population thus far, we anticipate, based on the historical record and the patchiness and marginal quality of lynx habitat and hare densities, that Colorado and the Southern Rockies, in the absence of additional translocations of lynx from elsewhere, are unlikely to support lynx over the long term. The area's distance from source populations of lynx reduces the likelihood that this area will receive the demographic support, via dispersal and immigration from other populations, thought to be important to

the maintenance of lynx populations in the DPS. Further, climate projections suggest lynx habitat will decline here as elsewhere (Gonzalez *et al.* 2007, pp. 4, 8), making habitats in these areas even more marginal, patchy, and isolated and, therefore, even less capable of supporting lynx populations over time.

Regardless, unlike the long-term presence of naturally resident and persistent populations in northeastern Minnesota and elsewhere within the range of the DPS (despite times when lynx numbers were likely very low in those places), the current presence of the introduced population in the Southern Rockies does not connote that habitats there contain the physical and biological features essential to lynx in quantities and spatial arrangements adequate to support lynx populations over time. It is possible that similar introductions in other places with few historical records and which also have likely not supported naturally resident lynx populations (e.g., northern Vermont, northern Michigan, northern Wisconsin, western and central Minnesota, southwestern Montana, central and southern Idaho, southern Washington and Oregon) would achieve results similar to those observed in Colorado. However, that finding also would not confirm the presence in those places of the essential physical and biological features in adequate quantity and spatial arrangement to support lynx populations over time. We believe it would be inappropriate and speculative to designate critical habitat in such areas that, based on the historical record of verified occurrence and assessment of the available information on habitat quantity and spatial configuration, appear historically and currently incapable of supporting viable lynx populations over time. We find no evidence that such areas can contribute meaningfully (let alone be essential) to the conservation and recovery of the lynx DPS. Therefore, we have not designated critical habitat in Colorado or the Southern Rockies despite the benchmarks achieved by the introduction program there.

(11) *Comment:* One peer reviewer noted that there is scientific evidence that lynx populations in the contiguous United States are connected with those in Canada but that it is unclear (a) if the persistence of southern populations depends on their own productivity or if augmentation from Canada is truly needed, and (b) what role connectivity among southern populations plays in maintaining the overall metapopulation structure. The reviewer felt the proposed rule implied a higher degree of certainty regarding population connectivity than may be the case and contended that we stated, despite the absence of scientific evidence, that lynx use habitat ''stepping stones'' to connect Montana to the Greater Yellowstone Area (GYA). The reviewer suggested that lynx in the GYA may be maintained by pulses of lynx from populations in Canada rather than movements of animals from Montana populations, and that recognizing this uncertainty is important as it relates to lynx in Colorado. The reviewer felt the proposed rule downplayed the persistence of the Colorado population because it lacked habitat ''stepping stones'' from northern populations, and that the absence of habitat ''stepping stones'' did not prevent several lynx from the population introduced into Colorado from dispersing (northward) to the GYA.

Our Response: The best available information indicates that lynx populations in the DPS rely on augmentation from populations in Canada. Based on genetic analyses, Schwartz *et al.* (2002, entire) concluded that the persistence of lynx populations in the contiguous United States depends on dispersal from larger populations (also see response to comment (23), below). As we stated in the proposed rule (78 FR 59434), connectivity and interchange with lynx populations in Canada is thought to be essential to the maintenance and persistence of lynx populations in the contiguous United States (McKelvey *et al.* 2000b, p. 33; U.S. Fish and Wildlife Service 2005, p. 2; Interagency Lynx Biology Team 2013, pp. 34, 42, 47, 54, 60, 65; Squires *et al.* 2013, p. 187). Additionally, we are aware of no persistent resident lynx populations in the DPS that are not directly (Maine, Minnesota, northern Montana and northern Idaho, and northern Washington) or indirectly (GYA) connected to lynx populations in Canada via suitable or potentially suitable boreal or subalpine forest habitat.

We used the term ''habitat 'stepping stones' '' in the Background section of the proposed rule (78 FR 59434) to describe the relative connectivity of populations in the Rockies to larger populations in Canada. We did not state that we are certain lynx use these habitat patches, but rather that patches of habitat potentially conducive to dispersal exist between the GYA and lynx populations to the north and, as noted previously by others (e.g., McKelvey *et al.* 2000a, p. 230; Interagency Lynx biology Team 2013, p. 50), that this is not the case in Colorado, where potential lynx habitat is separate and isolated from other potential lynx habitats and, thus, from northern lynx populations by more than 90 miles (150 km) of unsuitable lower-elevation desert and sagebrush habitats. We do not know to what extent this isolation contributed to the historical inability of lynx to naturally establish and maintain viable resident breeding populations in Colorado and elsewhere in the Southern Rockies, but we believe that it is reasonable to conclude that it is a factor. We also did not state or imply that the GYA lynx population is maintained by movements of animals from Montana populations; rather, we meant that the habitats that support lynx in northwest Montana are part of a potential dispersal corridor that may provide connectivity between lynx in the GYA and populations in Canada (78 FR 59434). We agree that the extent to which lynx use any potential dispersal corridors is uncertain.

Finally, our intent is not to downplay the achievements of the introduction effort in Colorado, but rather to explain what we think the presence of the introduced lynx population does and does not tell us about whether the habitat contains the PCE and is essential to the conservation of the DPS (also see our response to comment (10), above). We acknowledged in the proposed rule that lynx are highly mobile and regularly move long distances (78 FR 59435) and that some lynx from the population introduced into Colorado dispersed widely, including north across the expanse of unsuitable habitat that separates potential lynx habitat in the Southern Rockies from lynx habitats to the north (78 FR 59434, 59448–59449). Clearly lynx from the north also occasionally reached the Southern Rockies historically, as evidenced by the few verified records for Colorado and southern Wyoming. However, we find that the best available information suggests that Colorado and the Southern Rockies do not contain the physical and biological features essential to lynx in adequate quantity and spatial arrangement to support lynx populations over time, and we have not designated critical habitat in these areas.

(12) *Comment:* One peer reviewer felt that our use of the term ''transitional'' when describing boreal forests in the range of the DPS implied that lynx habitat used by southern populations is almost ''ephemeral,'' and that our characterization that lynx habitat in the contiguous United States is transitional lacks support and is misleading.

Our Response: We use the term ''transitional'' (78 FR 59433, 59434, 59438) to describe the southern margin of the boreal forest that extends into the northern contiguous United States,

where it ''transitions'' to other more temperate forest types, which is consistent with its use in Mech (1980, p. 271), Agee (2000, pp. 40, 41, 44), the 2000 listing rule for the lynx DPS (65 FR 16052, 16056, 16081–16082), the 2003 clarification of findings (68 FR 40077), the 2007 ''Significant Portion of the Range'' clarification (72 FR 1188), the 2009 revised critical habitat rule (74 FR 8616, 8635), the 2009 12-month finding on a petition to include New Mexico in the lynx DPS (74 FR 66939), and the revised Lynx Conservation Assessment and Strategy (LCAS; Interagency Lynx Biology Team 2013, pp. 39, 44, 52). It is important that readers understand that both lynx and snowshoe hares are true boreal forest species, and that most boreal forest habitats in the northern contiguous United States become patchy and marginal for both species as these forests transition to other forest types. The transitional nature of the boreal forest at its southern extent is believed (along with competition from other hare predators) to limit the numbers of both hares and lynx, preventing either from regularly achieving densities in the contiguous United States comparable to those regularly achieved in the classic boreal forests at the centers of their ranges in north-central Canada.

Although some mature multistory forest stands may provide stable lynx and hare habitat over time (Interagency Lynx Biology Team 2013, p. 29), in many parts of the DPS range lynx and hares fare best in areas with large proportions of young regenerating early-successional stands that exist temporarily following disturbance (Aubry *et al.* 2000, p. 374; Interagency Lynx Biology Team 2013, pp. 28–29). In the absence of additional disturbance, many of these stands will, through natural forest succession, mature into stands with less dense vegetative cover at ground or snow level, providing less food and cover for hares and reducing the quality of foraging habitat for lynx. For example, much of the current higher quality hare and lynx foraging habitat in northern Maine occurs in 15- to 35-year-old dense, regenerating spruce-fir stands that were previously clearcut (78 FR 59456). As these stands continue to mature, and with timber harvest practices and regulations that have shifted away from clear-cut harvest and use of herbicides to promote conifer regeneration, hare and lynx habitats are expected to decline broadly across the area, with the lynx population projected to decline by 55 to 65 percent in the next 20 years (Simons 2009, p. 217). In a sense, then, some lynx habitats truly are ''temporary'' (Interagency Lynx Biology Team 2013, p. 29) and ephemeral.

(13) *Comment:* One peer reviewer felt we inappropriately cited a non-peer-reviewed publication (Berg and Inman 2010) to support the statement that ''. . . important foraging habitat for lynx is often more limited and fragmented in the contiguous United States than it is in the northern boreal forests of Canada and Alaska'' (78 FR 59434).

Our Response: We believe that our use of this citation is appropriate given the authors' histories of research and monitoring with regard to lynx, snowshoe hares, and other carnivores and their respective habitats. We also cited in the proposed rule (78 FR 59433) many other published references describing the marked differences between snowshoe hare (i.e., lynx foraging) habitats in the contiguous United States and those in the boreal forest of Canada and Alaska: Wolff 1980, pp. 123–128; Buehler and Keith 1982, pp. 24, 28; Koehler 1990, p. 849; Koehler and Aubry 1994, p. 84; Aubry *et al.* 2000, pp. 373–375, 382, 394; Interagency Lynx Biology Team 2013, p. 77).

(14) *Comment:* One peer reviewer felt that seasonal and geographic differences in lynx habitat were poorly described in the proposed rule and that clear articulation of how lynx habitat differs across the southern population would be helpful. As an example, the reviewer noted that the habitat used in winter by lynx in the Northern Rockies (mature multistoried forests with dense horizontal cover at ground/snow level; Squires *et al.* 2010, pp. 1648, 1653, 1656) is almost opposite the habitat used by lynx in Maine year-round (young, regenerating spruce-fir; Vashon *et al.* 2012, pp. 15–16). The reviewer felt that (a) readers should understand that management actions in Maine may have actually created lynx habitat, (b) it is unclear whether Maine could support lynx without extensive forest management with herbicide treatment, and (c) the role that herbicide treatment of forests in Maine played to create/promote the conifer infill that lynx depend on should be discussed.

Our Response: Although our introductory discussion of lynx habitat in the Background section of the proposed rule (78 FR 59434–59435) was general in nature, we provided much more detail on geographic and seasonal differences in lynx habitat in the Critical Habitat, *Physical or Biological Features* section, where we described differences in boreal forests and lynx habitat characteristics for each of the regions within the range of the DPS (78 FR 59437–59442). In that section, we specifically noted differences in lynx habitat use in winter versus summer (78 FR 59439). Similarly, we discussed in some detail in the *Special Management Considerations or Protection* section (78 FR 59445) and the Proposed Revised Critical Habitat Designation section (78 FR 59456) the influence of industrial timber management and large-scale clearcutting on lynx habitat in Maine. However, we did not discuss the role of herbicides there, so we have added that information to the Critical Habitat, *Boreal Forest Landscapes* section of this final rule, and in our response to comment (19), below, where we provide additional detail regarding historic, recent, and projected future densities of lynx in Maine.

(15) *Comment:* One peer reviewer felt that den habitat in the Northern Rockies was poorly defined and that the proposed rule did not clearly describe how lynx respond to environmental characteristics at dens at various spatial scales.

Our Response: Although our discussion of denning habitat in the Background section (78 FR 59435) was general in nature, we included a more detailed and region-specific discussion in the Critical Habitat, *Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring* section (78 FR 59441–59442), where we summarized the available pertinent information regarding lynx den-site selection for each region in the range of the DPS. However, we did not go into detail concerning lynx den selection in response to environmental cues at various spatial scales because we did not think it is germane to the discussion of critical habitat given that denning habitat is not thought to be a limiting factor for lynx anywhere within the range of the DPS.

(16) *Comment:* One peer reviewer suggested that the designation of critical habitat apparently does little to alter Federal responsibilities for the species' management but that it is unclear how designation may affect lynx management and conservation on State and Tribal lands. The reviewer felt readers need to fully understand what the inclusion in or exclusion from a critical habitat designation means to lynx conservation and management on all lands, but especially for State and Tribal lands in Montana that were considered for exclusion in the proposed rule and which we have excluded from designation in this final rule. The reviewer also felt that our rationale and justification for excluding Tribal lands and lands managed in accordance with the Montana Department of Natural Resources and

Conservation (MDNRC) Forested State Trust Lands Habitat Conservation Plan (HCP) should be better articulated and fully explained in the final rule.

Our Response: We described the general and specific regulatory benefits of critical habitat to lynx conservation in our response to comment (8), above, and in the Consideration of Impacts under Section 4(b)(2) of the Act section, below. Because a Federal action or ''nexus'' exists for all activities that may affect lynx on Federally managed lands, the regulatory benefits of consultation in accordance with section 7 of the Act are more likely to occur. Federal agencies must consult with the Service to ensure that no activity they carry out, permit, authorize, or fund will result in the destruction or adverse modification of designated critical habitat.

Activities on State, Tribal, or private lands that involve a Federal nexus must similarly undergo section 7 consultation, though it is the Federal ''action agency'' that consults with the Service. However, there is no consultation requirement for activities on State, Tribal, or private lands for which a Federal nexus does not exist. With regard to lynx, the activities most likely to impact the species or its habitats involve timber harvest, fire/fuels management, or other vegetation or silvicultural treatments—activities that most often lack a Federal nexus on State, Tribal, or private lands. When evaluating whether to designate critical habitat in such places, we assess the benefits of inclusion versus the benefits of exclusion, and we only exclude areas for which the benefits of exclusion outweigh those of inclusion. In the case of Tribal lands and State or private lands with finalized lynx management plans or habitat conservation plans (HCPs), we have determined that Tribal management, and State and private management in accordance with finalized plans or HCPs, is more beneficial to lynx than a critical habitat designation would be. One component of this analysis is the recognition that many activities that could affect lynx on these lands lack a Federal nexus, thereby precluding opportunity to achieve conservation via section 7 consultation resulting from designation. Therefore, management in accordance with Tribal forest and/or wildlife management plans and HCPs or other formal management plans on State or private lands is more likely to result in conservation of the lynx and its habitats than would be achieved via designation as critical habitat.

With specific regard to lands managed in accordance with the MDNRC HCP (as well as those for other exclusions), we have in this final rule presented our detailed evaluation of the benefits of including these lands compared to the benefits of excluding them (see Consideration of Impacts under Section 4(b)(2) of the Act, below). We have determined that the benefits of excluding MDNRC lands outweigh the benefits of including them in the lynx critical habitat designation and that doing so will not result in the extinction of the lynx DPS.

With specific regard to Tribal lands, in accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on Tribal lands are better managed under Tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Such designation is often viewed by Tribes as an unwanted intrusion into Tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend. We have added details on Tribal management goals and plans, land status, and lynx conservation efforts to our consideration of and rationale for these Tribal lands exclusions. See Exclusions Under Section 4(b)(2) of the Act, below, for a detailed discussion of why these lands have been excluded.

(17) *Comment:* One peer reviewer suggested there is limited anecdotal evidence that lynx in the Greater Yellowstone Area (GYA) are declining, based on the failure to trap any ''native'' lynx there in 2005–2006 (the only lynx encountered were thought to have been associated with the introduced population in Colorado).

Our Response: We do not have evidence of a decline in the GYA lynx population. Although the GYA has a long history of lynx presence and recent evidence of reproduction (Squires and Laurion 2000, entire; Squires *et al.* 2001, entire; Murphy *et al.* 2006, entire), there are relatively few verified records of lynx from Yellowstone National Park and surrounding areas (65 FR 16058, 68 FR 40090). Additionally, lynx habitat in the GYA is naturally marginal (patchier and composed in many places of drier forest types), less capable of supporting snowshoe hares (Hodges *et al.* 2009, entire), and farther from source populations than most other parts of the DPS range (68 FR 40090). Given the naturally marginal habitat in this largely protected area, we believe it is unlikely that the GYA ever supported more than a handful of lynx home ranges in any given year. We find no evidence that the GYA once supported a larger or more robust lynx population than the small one suggested by verified historic and recent records and survey efforts.

(18) *Comment:* One peer reviewer suggested that lynx habitat in the western United States has contracted significantly in the last decade from fire and insect outbreak, although these changes are fairly recent and thus not addressed in the scientific literature. The reviewer cited the almost complete die-off of Engelmann spruce (*Pica engelmanii*) from 400,000 acres (161,874 hectares) of spruce–fir forests in the San Juan Mountains in Colorado because of spruce budworm infestation, and an increase in fire activity in the Northern Rockies since the mid-1980s at elevations that largely overlap lynx critical habitat.

Our Response: Climate change has resulted in warmer and drier conditions that have increased the number and extent of wildfires in the western United States and in boreal forests in Canada, and projected climate changes suggest this trend will continue, with increases likely in the frequency of large, intense forest fires (IPCC 2014a, p. 31; IPCC 2014b, p. 4; Joyce *et al.* 2014, p. 178; Mote *et al.* 2014, p. 495). Climate change is also increasing the vulnerability of western forests to insect and tree-disease outbreaks; large-scale tree die-offs have already occurred and are likely to increase in the future, and the subalpine forests on which lynx in the western contiguous United States depend may be particularly at risk (Joyce *et al.* 2014, p. 177; Mote *et al.* 2014, pp. 495–496). However, the potential consequences of climate change for lynx populations and their habitats remain unquantified. Fire and insects have been important elements of these forests historically, helping to maintain the mosaic of forest successional stages thought to be important to lynx and snowshoe hares. We have no evidence that these factors (fires and insect outbreaks) have thus far altered lynx habitats to the extent that landscapes historically or recently capable of naturally supporting lynx populations can no longer do so, although climate projections suggest

such changes are possible in the future. If lynx habitat has indeed contracted, it may be a temporary effect, and as regeneration and regrowth of these areas progresses, they should return to lynx habitat so long as fire, insect outbreaks, and climate warming and drying have not permanently altered the vegetative capacity and climax forest potential of these sites.

(19) *Comment:* One peer reviewer felt the proposed rule was unclear whether the projected reduction in lynx habitat in Maine was due primarily to a shift in timber harvest away from clearcutting to partial harvest, or if the herbicide use that had helped create conifer-dominated stands of value to lynx and hares has also been greatly curtailed. The reviewer also wondered if the decline would be a return to historical levels of lynx habitat in Maine prior to the extensive habitat fragmentation from earlier clearcutting and herbicide treatment and suggested we clarify this relationship in the final rule.

Our Response: The current abundance of snowshoe hare habitat (and, therefore, lynx foraging habitat) in northern Maine was created by large-scale clear-cut timber harvest of about 55 percent of the forestlands in northern Maine in response to a 1973–1985 spruce budworm (*Choristoneura fumiferana*) outbreak (Simons 2009, pp. 64, 218). Some of these clearcuts were treated with herbicide to promote conifer regeneration by reducing competition from deciduous species (Scott 2009, p. 7). From about 15 years to 35 years post-harvest, these regenerating stands provide excellent cover and forage for snowshoe hares (Simons 2009, pp. 217–218), and the prevalence of such stands is credited with the rapid increase in lynx numbers in Maine in the mid-1990s and early 2000s (Simons 2009, pp. 64, 122; Vashon *et al.* 2012, pp. 56–57). As these stands mature beyond about 35 years post-harvest, hare densities begin to decline as cover and forage are reduced due to forest succession (Simons 2009, p. 217). The areal extent of these high-quality hare habitats is believed to have peaked between 2007 and 2010, and lynx numbers in Maine also likely peaked at about that time (Simons 2009, p. 142; Vashon *et al.* 2012, pp. 50, 57). With the reductions in both clearcutting and herbicide application following enactment of the Maine Forest Practices Act of 1989, it is projected that lynx densities will decline by 55 to 65 percent by 2032 (Simons 2009, p. 217). By then, the lynx population, which is thought to have peaked at between 750 and 1,000 adults in 2006, may decline by more than half to perhaps 300 adults, which is still three times as many lynx as are thought to have inhabited Maine during a population low in the 1970s (Vashon *et al.* 2012, pp. 57–60).

How these numbers compare to historic lynx numbers in Maine is uncertain. Lynx have had a relatively constant presence in Maine since they were first documented in the State in 1833 (Hoving 2001, pp. 6–38). In general, lynx likely occurred at low densities prior to European settlement, when relatively small amounts of the spruce-fir forests in the State are thought to have been composed of young stands (Lorimer 1977, entire; Vashon *et al.* 2012, pp. 45, 56), but they likely responded positively to stand-replacing fires, wind events, and insect outbreaks (Hoving 2001, p. 25). Audubon and Bachman (1852) described lynx as occurring in regenerating forest following fire in Maine, and H.D. Thoreau (1893) noted that lynx were common in the ''burnt lands.'' Lynx may have also responded to timber harvest, which by 1900 had expanded to smaller diameter spruce for a growing paper industry. It is likely, then, that lynx numbers in Maine have fluctuated since European settlement, depending on the size and distribution of natural and human disturbances and the resultant young regenerating forest stands. At times, lynx were considered very common, and in some years in the 1800s, 200–300 lynx were harvested in Maine (Hoving *et al.* 2003, p. 363).

Finally, the extent to which herbicide treatment to favor conifer regeneration contributed to the development of optimal hare habitats in regenerating clearcuts (versus regeneration in untreated stands) is unclear. Herbicide treatment is expensive, and even in the 1980s, when herbicide application was highest, less than 20 percent of clear-cut stands were treated. The areal extent of herbicide application decreased by about 78 percent in 2000–2007 compared to peak application in the late 1980s, which may reduce the amount of conifer-dominated regenerating hare and lynx habitats in the future (Scott 2009, pp. 122–123).

(20) *Comment:* One peer reviewer commented that there was an assumption in the proposed rule that lynx populations within the DPS require demographic rescue periodically from populations in Canada. The reviewer suggested that it is unknown if augmentation from northern populations is sufficient for demographic rescue and that this uncertainty was poorly articulated in the proposed rule. The reviewer also suggested that it is unknown if the lagged synchrony observed in southern lynx populations resulted from the physical movement of lynx from the north or if southern populations increased due to a related environmental factor (e.g., increased hare abundance), and that this uncertainty also was not communicated in the proposed rule.

Our Response: We agree that it is uncertain whether the demographic health of lynx populations in the DPS is reliant on augmentation from Canadian populations and, if so, to what extent, and whether current rates of interchange/immigration are sufficient to provide demographic rescue (also see response to comment (22), below). We recognized and articulated some of these uncertainties at several places in the proposed rule. For example, we stated that lynx in the contiguous United States appear to function as discrete subpopulations connected via dispersal to the larger Canadian metapopulation, that lynx disperse in both directions across the United States-Canada border, and that this interchange is thought to be essential to the maintenance and persistence of lynx populations in the DPS (78 FR 59434). We similarly stated that the degree to which regional lynx populations in the DPS are influenced by local hare population dynamics is unclear, and that lynx presence and population dynamics in the DPS appear to be more influenced by the occurrence of irruptions from Canada than by intrinsically generated hare population cycles within the DPS range (78 FR 59436).

(21) *Comment:* One peer reviewer suggested that the proposed rule assumes that peripheral southern lynx populations (outside proposed critical habitat) failed to persist due to unsuitable habitat conditions but did not mention that no large incursion of lynx has happened in the western United States in the absence of active persecution (i.e., trapping).

Our Response: We believe the best available information indicates that we have included within the final critical habitat designation all places in the contiguous United States historically and currently capable of naturally supporting lynx populations and which will provide for the conservation of lynx. We are aware that no large irruptions of lynx from Canada into the contiguous United States have been documented since the DPS was listed and harvest was prohibited throughout its range. However, in the absence of trapping, which provided most of the data upon which the history of past irruptions was constructed, and with limited monitoring of lynx populations

on both sides of the border, there is uncertainty about the number of lynx that may be moving between populations in Canada and those in the contiguous United States.

We have no evidence that lynx were disproportionately persecuted in areas outside those we have designated (secondary or peripheral areas), and lynx populations in designated areas have persisted despite being similarly exposed to hunting and trapping prior to listing. Additionally, other than relatively low levels of reported incidental trapping (with very few resulting in lynx mortality), lynx have not been persecuted in the past 14 years since listing. In that time, populations have persisted in the areas designated as critical habitat, while other areas (with the possible exception of small areas of northern New Hampshire, northern Vermont, and Maine outside the designated area) have failed to attract lynx and support establishment of populations. We interpret this as a strong indication that these secondary and peripheral areas lack one or more of the essential physical or biological features in adequate quantity and/or spatial arrangement, and that it is less likely, given the previously noted dispersal capabilities of lynx, that these areas represent good lynx habitat which lynx have been unable to locate and colonize (but see response to comment (22), below).

(22) *Comment:* One peer reviewer noted that maintaining connectivity for lynx populations in the contiguous United States may become increasingly difficult in the future due to climate and anthropogenic change, that this added risk was not discussed in the proposed rule, and that a potentially dampened hare/lynx cycle in Canada (e.g., Ims *et al.* 2008, pp. 81, 85) may cause demographic and genetic impacts to southern lynx populations over time. However, the reviewer noted that lynx from the population introduced to Colorado made documented south-to-north movements, demonstrating that connectivity with the native population in the GYA is possible.

Our Response: Climate change and other anthropogenic change (human-caused habitat degradation/loss/fragmentation) could result in smaller and more isolated lynx populations in the contiguous United States, with reduced connectivity to lynx populations in Canada. We noted in the *Future of Lynx Habitat* sections of the proposed rule (78 FR 59443) and this final rule (below) that climate change could reduce the amount and quality of lynx habitat in the DPS range, with habitat patches becoming smaller, more fragmented, and more isolated (Carroll 2007, pp. 1099–1100; Johnston *et al.* 2012, p. 11), and that lynx populations could become more vulnerable to stochastic environmental and demographic events because of smaller population sizes and increased isolation (Carroll 2007, pp. 1100–1103). However, the level at which reduced connectivity might affect the demographic or genetic health of populations in the DPS is unknown.

Schwartz *et al.* (2003, entire) documented reduced genetic variation (lower mean number of alleles per population and lower expected heterozygosity) among peripheral lynx populations compared to populations in the core of the lynx geographical range. While recognizing that small changes in genetic variation can lead to large changes in population fitness, the authors noted that the differences between core and peripheral populations in their study were small enough to suggest a lack of significant population subdivision (i.e., no indication of genetic isolation, substantial genetic drift, or potential genetic ''bottlenecks'' among DPS populations; Schwartz *et al.* 2003, p. 1814). This finding is consistent with their earlier work, which documented high levels of gene flow (the highest yet documented for any carnivore) between core and peripheral lynx populations despite large separation distances (Schwartz *et al.* 2002, pp. 520–522). Their results did not suggest that reduced genetic variation among peripheral populations was due to human disturbance (i.e., habitat loss/fragmentation on the southern periphery of the geographic range; Schwartz *et al.* 2003, p. 1814), but they did imply that the persistence of lynx populations in the contiguous United States depends on dispersal from larger (core) populations (Schwartz *et al.* 2002, p. 522).

Currently, there is no indication that the levels of connectivity and gene flow between lynx populations in the DPS and those in the core of the lynx's range are inadequate to maintain the genetic health of DPS populations. Given the noted dispersal capabilities of lynx, it appears unlikely that levels of connectivity and gene flow will become inadequate in the foreseeable future. However, because demographic rescue (demographic stability of peripheral populations achieved via immigration from other populations sufficient to offset mortality and emigration in the peripheral population) requires much higher immigration rates than does genetic rescue (McKelvey *et al.* 2000b, pp. 23–24), reduced connectivity due to climate change, habitat loss/fragmentation, or a combination of these factors, is more likely to result in demographic rather than genetic impacts to lynx populations in the DPS. But, as with gene flow, the level of diminished connectivity at which DPS populations could suffer demographic impacts is unknown. Finally, how hare and lynx population cycles may be affected by climate change remains unclear (Yan *et al.* 2013, p. 3264); therefore, estimating the magnitude of potential future demographic and genetic impacts to southern lynx populations remains elusive. If climate change does dampen hare (e.g., Ims *et al.* 2008, pp. 81, 85) and lynx population cycles, and that dampening alters the periodicity and/or reduces the magnitude of immigration from Canadian to DPS lynx populations (which is poorly understood to begin with), then demographic and genetic impacts are possible.

(23) *Comment:* Peer reviewers and other commenters presented conflicting views on whether Colorado and other parts of the Southern Rockies (southern Wyoming, northeastern Utah, and northern New Mexico) should be included in the designation. Two peer reviewers agreed with our determination that Colorado and the Southern Rockies do not contain the PCE and are not essential to conservation of the lynx DPS. One peer reviewer questioned the consistency of our logic in not designating critical habitat in Colorado and the Southern Rockies relative to its application to native lynx populations. The reviewer thought we should consider designating critical habitat in Colorado and the Southern Rockies because (a) the introduced population may currently include more lynx than native lynx populations in northwest Wyoming or Minnesota, and (b) the area used by the introduced population in the San Juan Range of Colorado is larger than the area of montane forest that supports lynx in Wyoming. One peer reviewer disagreed with our decision not to designate critical habitat in Colorado or elsewhere in the Southern Rockies and with our determination that evidence is lacking to indicate that these areas historically supported resident lynx populations. The reviewer cited Cary (1911) and Meaney (2002) as evidence that Colorado historically supported a resident lynx population. The reviewer suggested that parts of western Colorado, southern Wyoming, and northern New Mexico contain the physical and biological features essential to lynx in adequate quantity

and spatial arrangement and that high elevations in these areas may become important to lynx conservation if climate change results in upslope movement of lynx and hare habitats, as some models suggest. Many other commenters urged us to designate critical habitat for lynx in Colorado and the Southern Rockies, while others supported our proposal not to designate critical habitat in these areas.

Our Response: Neither the presence of the introduced lynx population or the large area it has used demonstrate that habitats in Colorado and other parts of the Southern Rockies contain the physical and biological features essential to lynx in adequate quantity and spatial arrangement to support lynx populations over time or that this area is essential to the conservation of the lynx DPS. We do not conclude that Cary (1911, pp. 44, 48, 165–167) and Meaney (2002, entire) provide reliable evidence based on verified lynx occurrence data that Colorado historically supported a resident lynx population.

As described above in our responses to comments (10) and (11), the verified evidence suggests that habitats in Colorado and the Southern Rockies have not historically supported viable lynx populations or subpopulations. The importance of using only verified evidence and the need to avoid using anecdotal occurrence data to assess the ranges of rare and elusive species has been amply demonstrated by McKelvey *et al.* (2008, entire; see also our response to comment (10), above). The authors cautioned that this is particularly important when target species may be easily confused with other similar but more common species; using as an example the potential biological and conservation consequences of misidentifying even a small number of bobcats as Canada lynx (McKelvey *et al.* 2008, pp. 553–554). Halfpenny and Miller (1980, p. 8) indicated that Cary's (1911) summary was based largely on (unverified, anecdotal) observations by trappers, and the authors cited Armstrong (1972) who said these ''. . . ought to be regarded with a degree of caution.'' Similarly, Meaney's (2002, entire) unpublished review for the Colorado Department of Transportation of mostly anecdotal lynx records in the State points out many of the vagaries and inconsistencies of the anecdotal data, very unlikely high numbers of lynx reported as trapped in some counties in some years, and misidentification of large, pale bobcats as lynx, but then concludes, questionably in our opinion, that ''There is no doubt that established populations of lynx occurred in the northern mountains of Colorado'' (Meaney 2002, p. 5).

Based on our evaluation of the historic record of verified lynx occurrence, we find that, although lynx clearly occurred occasionally in the Southern Rockies, there is no evidence that the Southern Rockies, including southern Wyoming, western Colorado, northeastern Utah, and northern New Mexico, historically supported lynx populations. We conclude that the few verified records from these areas were most likely transient animals dispersing during ''irruptions'' from northern lynx populations after cyclic hare population declines. As we discuss below, habitat in Colorado and the Southern Rockies is marginal, naturally fragmented, and disjunct, with poor to marginal hare densities. This, combined with its apparent historical inability to naturally supporting lynx populations, suggests that this area does not contain the PCE (see also the ''*Application of the Criteria to the Southern Rocky Mountains and Certain National Forests in Idaho and Montana*'' section, below).

Also as we described above in our response to comment (10), the persistence, thus far, of the introduced lynx population in Colorado does not demonstrate that habitats there contain the essential physical and biological features in adequate quantity and spatial arrangement to support a lynx population over the long term. Like Colorado and the Southern Rockies, many areas across the northern border of the United States contain some amounts of the essential physical and biological features and have verified records of lynx (in fact, New York, Michigan, Wisconsin, and Idaho all have more verified historic lynx records than Colorado/Southern Rockies; McKelvey *et al.* 2000a, p. 210), but no evidence they have ever supported more than occasional dispersing lynx. The historic inability of these areas to naturally support resident lynx populations indicates either (a) that the quantity and/or spatial arrangement of one or more physical or biological features is inadequate, (b) the area's distance and relative isolation from other lynx habitats and populations prevents the consistent immigration needed to provide the demographic stability that may be necessary to maintain a viable lynx population, or (c) that a combination of these factors has prevented these areas from historically supporting lynx populations over time.

The best available information does not allow us to simply measure and map each of the physical and biological features essential to lynx and thus distinguish areas that contain each in adequate quantity and spatial arrangement from other areas that do not (see also *Criteria Used to Identify Critical Habitat,* below). Nor does it allow us to determine at what specific distance and relative level of isolation from other lynx habitats and populations a particular area becomes unlikely to receive adequate demographic input (via immigration from other populations) thought to be necessary for population viability and persistence. Regardless, it is informative that Colorado and the Southern Rockies failed to attract lynx and support establishment and maintenance of lynx populations in the wake of two unprecedentedly large irruptions of lynx from Canada into the western United States in the early 1960s and again in the early 1970s (McKelvey *et al.* 2000a, pp. 219, 242). To what degree this failure resulted from the marginal quality of the habitat versus the area's distance and relative isolation is unclear. However, it is clear that, while lynx were unable to establish and maintain populations in Colorado or elsewhere in the Southern Rockies, other lynx populations in the DPS, where we have designated critical habitat, did persist, despite being exposed to similar habitat threats and harvest pressures. That is, we have no indication that habitat loss, degradation, or fragmentation or trapping pressures were greater in the Southern Rockies than in places where lynx populations persisted despite them. In fact, trapping lynx was prohibited in Colorado (1970) and Wyoming (1973) long before it was prohibited in most other States within the range of the DPS (Maine–1967, Minnesota–1984, Washington–1990, Idaho–1996, Montana–2000).

Finally, although recent climate projections suggest that snow water equivalent (the amount of water held in a given amount of snow) may decline less in Colorado than in other areas of the Southwest, it is nonetheless projected to decline by 26 percent by the end of this century (Garfin *et al.* 2014, p. 466). This will likely translate to a reduction in the areas that will continue to have snow conditions that provide a competitive advantage to lynx over bobcats and other hare predators. Additionally, when specifically modeling potential impacts of climate change on lynx, researchers concluded that potential snow and boreal forest habitat refugia were most likely to occur in the Bridger-Teton National Forest in northwestern Wyoming, the Superior National Forest in northeastern Minnesota, and across western Canada, while high-elevation parts of Colorado

are among the areas vulnerable to the loss of potential lynx habitat in the long term (Gonzalez *et al.* 2007, pp. 4, 8). Even if suitable snow conditions persist in Colorado and boreal and subalpine forests move upslope with continued climate warming, the amount of potential lynx habitat, already considered patchy and relatively isolated, will likely decrease, becoming even more patchy and isolated and less capable of supporting lynx populations over time.

For these reasons, we conclude that habitat in Colorado and other parts of the Southern Rockies is marginal, naturally fragmented, and disjunct; that it has not been historically capable of supporting natural resident lynx populations; that it has not been demonstrated to contain all of the physical and biological features essential to lynx in adequate quantity and spatial arrangement to support lynx populations over the long term (i.e., it does not contain the PCE); and that it is not essential to the conservation of the DPS. Therefore, we have not designated critical habitat for lynx in Colorado or elsewhere in the Southern Rocky Mountains.

(24) *Comment:* One peer reviewer, one Federal agency commenter, and several other commenters took exception to our description of the translocation of lynx from Alaska and Canada to Colorado as an ''introduction'' rather than a ''reintroduction.''

Our Response: As described above in our responses to comments (10), (11), and (23), we believe the weight of verified evidence suggests that Colorado did not historically support a resident native lynx population, and that the few verified records of lynx prior to the introduction of the current population were likely transient, dispersing animals. Although the translocation of lynx from Alaska and Canada to Colorado has often been referred to as a reintroduction, including in some documents by the Service, we believe it represents the establishment of a lynx population in a place that, based on our evaluation of the best available information, apparently did not support one previously and, therefore, is more accurately described as an introduced population. We have clarified the text throughout this rule to indicate that our use of the term ''introduction'' refers to the establishment of a lynx population in Colorado, as opposed to the reintroduction of individual lynx into an area where individual lynx rarely occurred historically.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from States regarding the proposal to designate critical habitat for the lynx DPS are addressed below. Other comments from States pertaining to other issues that may be beyond the scope of this final revised critical habitat designation (e.g., the lynx DPS's listing status under the Act, etc.) will be addressed in separate letters to the States.

(25) *Comment:* The Maine Department of Inland Fisheries and Wildlife supported our determination that the Van Buren and Herseytown-Staceyville areas of Maine, which we proposed to designate and which we have designated as lynx critical habitat in this final rule, contain the PCE and may be essential to lynx conservation. However, the agency provided its opinion that these areas were likely not occupied by lynx at the time of listing and included documentation of standardized lynx surveys conducted in northwestern Maine in 1995–1999 and 2003–2008, and other confirmed lynx occurrences from 1995–2000.

Our Response: We reviewed the survey information provided by the agency and determined that the 1995–1999 and 2003–2008 surveys did not adequately cover the Herseytown-Staceyville or Van Buren areas and, therefore, do not sufficiently demonstrate that lynx were absent from these areas at the time of listing. We have reviewed additional lynx record data that indicate lynx have occupied the Herseytown-Staceyville and Van Buren areas historically and since the lynx DPS was listed under the Act, and which demonstrate occupancy at the time of listing in adjacent towns (Hoving 2001, pp. 16, 170–179; Hoving *et al.* 2003, entire; U.S. Fish and Wildlife Service 2013c, entire). For these reasons, we find that the best available information indicates that the newly designated Van Buren and Herseytown-Staceyville areas were likely occupied by lynx at the time of listing and that these areas contain the PCE. Also see our response to comment (3), above, and *Recent Lynx Occurrence and Reproduction in Northern New Hampshire, Northern Vermont, and Eastern and Western Maine,* below).

(26) *Comment:* The Idaho Department of Lands noted that the proposed rule included 26 acres (0.04 mi^2 (0.1 km^2)) of State Endowment Trust lands in northern Idaho. The agency provided forest inventory data suggesting that most of the area consists of forest types not considered suitable for lynx and requested that these lands not be designated as critical habitat.

Our Response: Although these State Endowment Trust lands do not consist entirely of forest types considered hare and lynx foraging habitat, more than a third of the area is subalpine fir, which is considered foraging habitat. The other portion of this land is consistent with the definition of matrix habitat in the PCE, which is considered an essential feature of lynx critical habitat and is a component of the PCE. Further, while this parcel is at the edge of the designated area, it is surrounded by and contiguous with other similar forest types that also meet the criteria for critical habitat despite being composed of both foraging and non-foraging (i.e., matrix) habitats. We have determined that these State lands contain the physical and biological features (PBFs) essential to the conservation of the lynx DPS and that they are part of the landscape that has supported a resident lynx population over time. Therefore, we have determined that these State Endowment Trust lands contain the PCE, and we have included this area within the final critical habitat designation.

(27) *Comment:* The New Mexico Department of Agriculture requested that the State-boundary-based DPS range remain in place and that New Mexico be specifically excluded from it. The agency believes that a geographical DPS boundary based on the habitat requirements of lynx is more appropriate than the proposed revised ''verbal definition'' of the DPS that would extend the Act's protections to lynx wherever they may occur in the contiguous United States. The agency feels that the proposed change could increase section 7 consultation requirements for actions on Federal lands in northern New Mexico, negatively affecting ranching operations that hold Federal grazing permits on Forest Service or BLM lands, and perhaps precluding or delaying range improvement and watershed restoration projects on these lands.

Our Response: Our 2000 listing rule (65 FR 16052) and our 2003 clarification of findings (68 FR 40076) used State boundaries within what we understood to be the range of lynx in the contiguous United States at that time. Subsequently, lynx associated with the introduced population in Colorado were confirmed in northern New Mexico. Revising the existing range of the DPS with this rule addresses that

inconsistency between the current range of lynx and how the lynx DPS was delineated so that the lynx DPS is now consistent with our DPS policy. Because lynx may be present in northern New Mexico, Federal land managers and agencies that may authorize, fund, or permit activities where lynx may be present should review their actions to determine whether consultation with the Service is necessary to ensure that such activities do not jeopardize the lynx DPS. However, we do not foresee a dramatic increase in section 7 consultations because most of the potential lynx habitat in New Mexico occurs on the Carson and Santa Fe National Forests, and these Federal lands managers already coordinate with the Service to avoid potential impacts to lynx and their habitats. Further, because grazing by domestic livestock is not likely to adversely affect hare or lynx habitats (Interagency Lynx Biology Team 2013, p. 85), we do not anticipate additional regulatory burdens to Federal grazing permit holders. Finally, range improvement and watershed restoration projects can include measures to conserve lynx and hare habitats, and these considerations are unlikely to preclude or substantially delay such projects.

(28) *Comment:* The New Mexico Department of Game and Fish commented that the likelihood of lynx entering and establishing a population in New Mexico remains remote, and the agency is extremely concerned that the extension of ESA protections to individual animals that may enter the State will have significant economic, cultural, and management impacts to currently lawful activities such as hunting, trapping, agency-approved wildlife management activities, and various other activities on public and private lands in northern New Mexico. The agency expressed concern that the level of these impacts may require the Service to conduct at least an environmental assessment and potentially an environmental impact statement to address them.

Our Response: We agree that it is unlikely that lynx entering New Mexico from the introduced population in Colorado will establish a self-sustaining population in New Mexico. However, because at least 60 lynx are documented to have traveled into New Mexico after their release in Colorado (Shenk 2007, p. 10; U.S. Forest Service 2009, pp. 9–10), the ''may be present'' standard for initiating section 7 consultation between the Service and Federal land managers and permitting agencies in northern New Mexico may be met for actions in these areas. Therefore, Federal land managers and agencies that carry out, fund, or permit activities that may affect lynx or lynx habitats should review their actions to determine whether consultation with the Service is necessary to ensure that these activities do not jeopardize the lynx DPS. We do not anticipate significant restrictions on otherwise lawful activities as a result of these consultations, and we expect little if any impacts to private landowners because activities on private lands would only undergo section 7 consultation if they had a Federal nexus (also see our responses to comments (8) and (16), above). Because the Act does not allow us to consider economic or social impacts when making listing determinations (such as redefining the range or boundaries of a listed species), it is not necessary, and would be inappropriate, to conduct NEPA analysis on the revision to the lynx DPS range.

(29) *Comment:* The Wyoming Game and Fish Department, the county commissions of Lincoln, Park, Sublette, and Teton Counties, the Coalition of Local Governments representing the county commissions and conservation districts for Lincoln, Sweetwater, Uinta, and Sublette Counties, the State of Wyoming Select Committee on Federal Natural Resource Management, and the Wyoming Governor's Office all oppose the designation of lynx critical habitat in Wyoming, and in particular the proposed additions of lands in Grand Teton National Park in Teton County and on BLM, State, and private lands in Sublette and Lincoln Counties. Most of these commenters contend that habitats in Wyoming, including the proposed additions, do not contain the features essential to lynx and that evidence is lacking that they are occupied by lynx or that they currently support or historically supported a resident lynx population. They believe critical habitat designation in Wyoming, including in the additional areas, will have substantial impacts on economic development and management of other resources. Several of these commenters requested that the Service (a) designate lynx in Wyoming as an experimental, nonessential population in accordance with section 10(j) of the Act, and (b) collaborate with State agencies within the range of the DPS to complete a recovery plan for lynx prior to designating critical habitat so that the recovery plan can inform the eventual designation. Several other commenters similarly oppose designation in Wyoming, including the proposed additions, and one specifically opposes designation of any lands within the Shoshone National Forest. Many other commenters support the proposed additions to critical habitat in the GYA.

Our Response: In our previous evaluations of critical habitat for lynx, we determined that habitats in the GYA, including portions of northwest Wyoming in Yellowstone National Park and the Bridger-Teton and Shoshone National Forests, contain the physical and biological features essential to the conservation of lynx, and that the area has a long history of lynx presence (70 FR 68294; 74 FR 8619, 8643–8644). As described in our response to comment (17), above, habitats in the GYA have been demonstrated to contain the essential features in sufficient quantity and spatial arrangement because they (a) have supported a small but persistent lynx population over time, and (b) were occupied by lynx at the time of listing (Squires and Laurion 2000, entire; Squires *et al.* 2001, entire; Murphy *et al.* 2006, entire). Therefore, the GYA meets our criteria for designation as critical habitat.

In northwestern Wyoming and the GYA, lynx are generally associated with the Rocky Mountain Conifer Forest vegetation class, which is dominated by subalpine fir, Engelmann spruce, and lodgepole pine, and which often occurs in a patchy distribution within a mosaic of other vegetation types that do not support snowshoe hares at densities adequate to provide lynx foraging habitat (73 FR 10866). In areas with patchily distributed foraging habitats, like those typical of the GYA, lynx home ranges incorporate extensive areas of non-foraging ''matrix'' habitats that are used primarily for travel between patches of foraging habitat (74 FR 8644). Therefore, lynx home ranges and designated critical habitat in the GYA may contain substantial areas that do not contain all of the physical and biological features essential to lynx. However, such areas are a necessary component of the landscape that does contain the features. The areas of Grand Teton National Park and the predominantly BLM-managed lands east and south of the Bridger Teton National Forest that we have added to this final critical habitat designation also include matrix habitats, but they are part of the larger landscape that has supported a resident lynx population and, therefore, contains the PCE.

Although habitat information and mapping for the areas we have added to the critical habitat designation in Wyoming were not received in time to evaluate them during the preparation of our previous designation in 2009, it was clear that lynx habitat did not stop at the boundary of the Bridger-Teton

National Forest. However, we designated critical habitat based on the best information available at the time. Since then, additional and refined habitat mapping has become available for these areas, along with recent verified use by lynx and/or information on hare habitats and abundance (U.S. Fish and Wildlife Service 2013a, entire; 2013b, entire). The areas we have added to the designation in Wyoming are natural extensions of adjacent designated lynx habitats and are part of the landscape that supports the GYA's small but persistent lynx population. We have worked closely with both the National Park Service and the BLM in Wyoming to ensure that our designation reflects the most appropriate interpretation of the best available information on lynx occurrence and habitat distribution so that our designation most accurately encompasses the areas that contain the features essential to the conservation of the lynx DPS.

Finally, the Act does not allow us to designate an existing population as a 10(j) experimental, nonessential population. The section 10(j) provision of the Act can be applied only in cases where no population currently exists and is effective only upon release of animals brought from other populations. The best available information indicates that northwestern Wyoming had a small lynx population historically and at the time of listing, and that a small number of lynx currently persist and reproduce in the State. Thus, we cannot designate the Wyoming lynx population as a 10(j) nonessential experimental population because doing so would not conform to the Act.

(30) *Comment:* The Montana Department of Natural Resources and Conservation (MDNRC) requested that we exclude lands covered by the MDNRC Forested State Trust Lands HCP from critical habitat designation in accordance with section 4(b)(2) of the Act, and the Washington State Department of Natural Resources (WDNR) requested that we similarly exclude lands covered by the WDNR Lynx Habitat Management Plan. Several other commenters requested that MDNRC lands not be excluded from designation, either because they felt these lands are essential to the conservation of the lynx DPS or because the MDNRC HCP is the subject of an ongoing court case.

Our Response: We have weighed the benefits of designating the lands covered by these plans against the benefits of excluding them, and we have determined that the benefits of excluding them outweigh the benefits of including them in the final designation. Therefore, we have excluded the lands covered by both these conservation plans from lynx critical habitat. More details regarding our analyses of the benefits to lynx of these plans are presented in the Consideration of Impacts under section 4(b)(2) of the Act section, below (and see our response to comment (16), above). The Service and the MDNRC are currently defending the HCP in a lawsuit that challenges the HCP's adequacy with regard to the conservation of grizzly bears and bull trout. The HCP's adequacy with regard to lynx conservation was not challenged in the lawsuit.

(31) *Comment:* The Washington Department of Fish and Wildlife (WDFW) agreed that the Kettle Range of northeastern Washington did not support a lynx population at the time of listing. Despite this, WDWF suggested that we consider designating the area because it may support lynx movement between larger areas of habitat in the Selkirk and Cascade Mountains, and because a lynx population could become re-established in the future because lynx harvest no longer occurs there and habitat conditions may improve as parts of the area continue to recover from large fires in the 1980s. Conversely, the Board of County Commissioners for Stevens County, Washington, supported our decision not to designate critical habitat in northeastern Washington.

Our Response: The Kettle Range in northeastern Washington historically supported a lynx population (Stinson 2001, pp. 13–14), and boreal forest habitat within the Kettle Range appears to contain habitat for lynx; however, there is no evidence that the area was occupied by lynx at the time of listing. The Kettle/Wedge area was included as a core area in the recovery outline despite lacking recent evidence of reproduction and, therefore, did not completely meet the core area criteria in the outline (U.S. Fish and Wildlife Service 2005, pp. 3–5, 21). Moreover, while the Kettle Range contains physical and biological features important to lynx, its spatial configuration and quantity of habitat do not appear to be sufficient to provide for the conservation of lynx. Additionally, we are aware of no evidence that lynx travel between the Northern Rockies and the North Cascades via northeastern Washington. As with other areas that were not occupied at the time of listing (and described in more detail in our response to comment (32), below), we could not designate the Kettle/Wedge area as critical habitat unless we determine that the DPS could only be conserved and recovered if we were to do so (i.e., that the area is essential to the conservation of the DPS). We have not determined that this area is essential to the conservation and recovery of the DPS and we have not designated critical habitat in the Kettle/Wedge area in this final rule.

Public Comments

(32) *Comment:* We received many public comments requesting that we designate additional areas as critical habitat, including the Southern Rocky Mountains (parts of western Colorado, northern New Mexico, northeastern Utah, and south-central Wyoming), the Kettle/Wedge and other areas of northeastern Washington, Oregon, additional areas of northern Idaho and western Montana, parts of central and southeastern Idaho, additional areas in northern Minnesota, and parts of northern New Hampshire and northern Vermont. Some commenters felt we should designate critical habitat in all areas identified as ''core areas'' in the recovery outline (U.S. Fish and Wildlife Service 2005, entire), while other commenters felt that ''secondary'' and ''peripheral'' areas identified in the outline also should be designated.

Our Response: Critical habitat is defined in section 3 of the Act as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (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 a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Section 3(5)(C) also states that critical habitat ''shall not include the entire geographical area which can be occupied by the threatened or endangered species'' except when the Secretary determines that the areas are essential for the conservation of the species. The term ''conservation'' as defined in section 3(3) of the Act means ''to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.''

With the exception of parts of western Colorado, where a lynx population was introduced just prior to our listing the DPS as threatened, there is no evidence that the places mentioned above were occupied by resident lynx populations at the time of listing and, for most, no

evidence that they are currently occupied by lynx or that they contain the PCE. In order to designate critical habitat in areas not occupied at the time of listing, we must determine that those areas are essential to the conservation and recovery of the DPS (i.e., that the DPS could only be conserved and recovered if we were to designate those areas). To determine what is essential to conservation and recovery, we must look at the threat for which the DPS was listed and determine whether designating unoccupied areas would contribute meaningfully to addressing and ameliorating that threat. The lynx DPS was listed as threatened due to the inadequacy, at the time of listing, of existing regulatory mechanisms and, unlike many species listed under the Act, not to any substantial documented population decline or significant range contraction (65 FR 16071–16082; 68 FR 40084–40101). We have determined that designating areas not occupied by lynx at the time of listing would not meaningfully address or ameliorate the threat for which the DPS was listed and that doing so would not improve the likelihood of recovery (the point at which the protections of the Act are no longer necessary and delisting the DPS would be appropriate). We do not find that the DPS can only be conserved and recovered if we were to designate areas not occupied at the time of listing. Because these areas are not essential to the conservation and recovery of the DPS, designating them would not comply with the Act. Therefore, we have not designated critical habitat in areas that were not occupied by lynx at the time of listing.

Parts of Colorado were occupied by an introduced population of by lynx at the time of listing. However, habitats there apparently did not historically support a resident lynx population, and we have determined that these areas likely do not contain the physical and biological features essential to lynx in adequate quantity and/or spatial arrangement to support a lynx population over time. For additional details regarding our evaluation of the historic record of verified lynx occurrence in Colorado and the Southern Rockies and of the quality of potential lynx habitats there, see our responses to comments (10), (11), and (23), above, and *Application of the Criteria to the Southern Rocky Mountains and Certain National Forests in Idaho and Montana* under the *Criteria Used to Identify Critical Habitat* section, below.

In the recovery outline, we defined six core areas for lynx as those having *both* persistent verified records of lynx occurrence over time *and* recent evidence of reproduction (U.S. Fish and Wildlife Service 2005, pp. 3–5, 20–21). However, as discussed above in our response to comment (31), the Kettle/Wedge area of northeastern Washington was included as a core area despite lacking recent evidence of reproduction and, therefore, it did not completely meet the core area criteria in the outline. We also defined the Southern Rocky Mountains of Colorado and southern Wyoming as a ''provisional'' core area because it contained an introduced lynx population that had demonstrated reproduction (U.S. Fish and Wildlife Service 2005, p. 4). Colorado otherwise does not meet the outline's criteria for core areas because prior to the introduced population it lacked persistent verified records of lynx occurrence over time. Southern Wyoming also lacked such records and also had no evidence of recent reproduction. Aside from these two areas (Kettle/Wedge and Southern Rockies), we have designated critical habitat that includes the vast majority of the other areas identified as core areas in the recovery outline.

Regardless, the methodology we used in defining areas for lynx critical habitat did not mirror that used for the lynx recovery outline, although it did reflect the biological concepts considered in the recovery outline. We used the best scientific information available in determining which areas contained the features essential to the conservation of lynx. The areas we determined to be essential for the conservation of lynx do not include all the areas identified in the recovery outline. The criteria we used for determining areas essential to the conservation of lynx for the revised critical habitat designation are based on the critical habitat requirements of the Act, which are more selective than those used for delineating the recovery areas in the outline. The recovery outline more broadly encompasses older records of lynx, and the areas in the recovery outline were mapped conceptually, include substantial areas that do not contain the physical and biological features essential for lynx, or are both unoccupied and not essential for lynx conservation, and, therefore, do not meet the definition of critical habitat. We refined our mapping for the purposes of designating critical habitat in order to meet the statutory requirements associated with critical habitat. As a result, areas determined to be essential to the conservation of lynx for the purposes of critical habitat did not include all the areas delineated in the recovery outline.

(33) *Comment:* One commenter contends that, because we acknowledge that the best available information does not allow us to simply measure and map all the physical and biological features essential to lynx across the range of the DPS, we have failed to demonstrate that designated areas actually contain all the essential features and, therefore, we should withdraw the designation until we have information adequate to map only those areas that contain all of the essential features. Another commenter argued that, because we concede that the best available information does not allow specific quantification of the essential physical and biological features, it is inappropriate to use ''adequate quantity and spatial arrangement'' of these features as a prerequisite for critical habitat and we should designate all areas that demonstrate they contain some quantity of the features.

Our Response: The Act does not require that we have perfect information before designating critical habitat, only that we make our designations appropriately based on the best available information. Because we lack perfect information and tools adequate for measuring the precise distribution of all the essential features across the broad range of the DPS we must look at the history of verified lynx records, the results of lynx and hare surveys and habitat assessments, and evidence of an area's ability to support lynx over time to evaluate the historic and current distributions of habitats that contain the essential features. We have evaluated the available scientific and commercial information and believe that this critical habitat designation appropriately relies on that information to distinguish between areas that demonstrably contain the essential features in adequate quantity and spatial arrangement to support lynx populations and which, therefore, are essential to the conservation and recovery of the DPS from other areas for which such evidence is lacking.

(34) *Comment:* Several commenters stated that we failed to identify and designate critical habitat in important linkage corridors they believe are essential to the conservation of the DPS. Other commenters believe that we should designate critical habitat in northeastern Washington because it serves as an important linkage between lynx populations in the Northern Rockies of Montana and Idaho and those in the North Cascades of north-central Washington.

Our Response: We agree that providing protection for travel and dispersal are important for maintaining lynx populations over time. Critical habitat is designated for the

conservation of the PCE essential to the conservation of the lynx and necessary to support lynx life-history functions. The PCE comprises the essential features of the boreal forest types that provide, for example, prey, reproduction and denning habitat, and snow conditions that give lynx a competitive advantage over other hare predators. Critical habitat for lynx does provide habitat connectivity for travel within home ranges, and exploratory movements and dispersal within critical habitat units. Critical habitat in the final rule was delineated to encompass occupied areas containing features essential to the conservation of the lynx to provide connectivity within the particular regional unit and to maintain direct connectivity with lynx populations in Canada.

Lynx populations in the contiguous United States are believed to be influenced by lynx population dynamics in Canada, and many of these populations in Canada are directly interconnected with U.S. populations. Therefore, retaining connectivity with the larger lynx population in Canada is thought to be important to ensuring long-term persistence of lynx populations in the United States. However, lynx are wide-ranging animals with a well-documented ability to make long journeys across both suitable and unsuitable habitats (68 FR 40079), and there is no evidence that human-caused factors have significantly reduced the ability of lynx to disperse or resulted in the loss of genetic or demographic interchange (65 FR 16079). As we highlighted in our response to comment (22), above, although the level of diminished connectivity at which DPS populations could be affected is unknown, we have no evidence that current levels of connectivity between lynx populations in the DPS and those in the core of the lynx's range are inadequate to maintain the genetic and demographic health of DPS populations or that this situation is likely to change in the foreseeable future. Finally, as stated above in our response to comment (31), we are aware of no evidence that lynx travel between the Northern Rockies and the North Cascades via northeastern Washington.

(35) *Comment:* Some commenters questioned the adequacy of the environmental assessment and other aspects of our compliance with NEPA. They felt that the draft environmental assessment lacked information, did not address recovery, and did not address the full range of alternatives. Some recommended an alternative that includes all core areas identified in the recovery outline. Some felt that we should prepare an environmental impact statement (EIS) on this action.

Our Response: We have complied with the requirements of NEPA for this critical habitat designation for lynx. An EIS is required only in instances where a proposed Federal action is expected to have a significant impact on the human environment. We prepared a draft environmental assessment and a draft economic analysis of the effects of the proposed designation to determine whether designation of critical habitat would have significant impacts. A notice of availability for public review of these documents was published in the **Federal Register** on June 20, 2014 (79 FR 35303). The draft documents have been available since that date on our Web site (*http://www.fws.gov/mountain-prairie/species/mammals/lynx/index.htm*), at *www.regulations.gov,* and by request from the Service's Montana Field Office. We accepted public comment for 30 days after the posting. Following consideration of public comments, we prepared a final environmental assessment and determination that critical habitat designation does not constitute a major Federal action having a significant impact on the human environment. That determination is documented in our Finding of No Significant Impact (FONSI). Both the final environmental assessment and FONSI are available on our Web site and at *www.regulations.gov* (also see **ADDRESSES** section of this rule).

The environmental assessment was prepared for this rule to identify alternatives, identify and analyze significant issues, and determine whether additional analysis was required in an EIS. Two alternatives were considered in the EA: The No Action (Baseline) Alternative and the Proposed Action. Two other alternatives were considered but not brought forward for analysis. The two alternatives not considered further were: (1) Critical habitat designation of all areas within the geographic range of the lynx in the contiguous United States, and (2) designation of all recovery areas (including core areas) as described in the lynx recovery outline. These alternatives were not carried forward because the Act specifies that, except in circumstances determined by the Secretary, critical habitat shall not include the entire geographic area that can be occupied by the species, and the recovery outline was not analyzed as an alternative because it did not meet the criteria for critical habitat defined in the proposed rule.

The designation of critical habitat itself is not a recovery action, but identifies geographic areas that have the primary biological and physical elements necessary for conservation of lynx and that may require special management. We recognize that designation of critical habitat may not include all of the habitat area that may eventually be determined to be necessary for the recovery of a species. Critical habitat designations made on the basis of the best available information will not control the direction and substance of future recovery plans or planning efforts.

Comments on the Economic Analysis

(36) *Comment:* The Small Business Association Office of Advocacy (Advocacy) expressed concern that we improperly certified that the proposed rule would not have a significant impact on a substantial number of small businesses based on the mistaken belief that critical habitat designations only impact Federal agencies. Advocacy asserts that small businesses, especially in the forestry industry, are concerned that we are not considering the impact this designation will have on the industry, and that we should publish an Initial Regulatory Flexibility Analysis (IRFA).

Our Response: Our assessment of our responsibilities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), including the need for an IRFA, was provided in the Required Determinations—Amended section of the Notice of Availability published in the **Federal Register** on June 20, 2014 (79 FR 35308) and is reaffirmed in the Required Determinations section of this final rule (below). We evaluated the potential timber-related effects of the critical habitat designation in our environmental assessment (U.S. Fish and Wildlife Service 2014, pp. 35–44, 81–82) and both our 2008 and 2014 economic analyses (IEc, Inc. 2008, 4–1—4–39; U.S. Fish and Wildlife Service and IEc, Inc. 2014, pp. 6–15). We concluded that critical habitat designation was unlikely to result in significant impacts to timber-related activities because these activities on Federal lands or for which a Federal nexus exists already must undergo consultation, because the additional prohibition on the destruction or adverse modification of designated critical habitat is unlikely to result in additional conservation measures or restrictions, and because these activities on private lands for which there is no Federal nexus typically will not require consultation under section 7 of the Act.

(37) *Comment:* Multiple commenters stated that the economic screening analysis did not comply with ESA

Section 4(b)(2) or the 2010 Wyoming District Court decision, which enjoined the critical habitat designation in Washington State due to inadequacies that the court identified in the Service's 2009 critical habitat rulemaking. The commenter states that based on the Tenth Circuit's decision in *New Mexico Cattle Growers Association* v. *U.S. Fish & Wildlife Service,* 248 F. 3d 1277, 1285 (10th Cir. 2001), the District Court concluded that the Service cannot focus solely on the ''quantifiable discounted future incremental costs.'' One commenter noted that the screening analysis used the baseline model and considered only the incremental effects of the designation of critical habitat. The commenter stated that new Service guidance endorsing the baseline approach does not relieve the Service from the order issued by the District Court in this case. The commenter goes on to state that the approach used in the screening analysis forecloses any possibility that the Service would give meaningful consideration to Washington State Snowmobile Association's (WASSA's) Section 4(b)(2) exclusion request.

Our Response: The Service relied on both the economic screening analysis prepared for this revised designation (U.S. Fish and Wildlife Service and IEc, Inc. 2014, entire) and the Economic Analysis it prepared for the 2009 designation (IEc, Inc. 2008, entire) to evaluate the potential economic impacts from the critical habitat designation and to give meaningful consideration to the WASSA's exclusion request. The WASSA provided detailed comments about potential economic impacts, which were also considered by the Secretary when she determined whether or not to exclude any areas as a result of economics under section 4(b)(2) of the ESA.

(38) *Comment:* Multiple commenters stated that the economic analysis should consider impacts to all 41,547 square miles proposed for designation. One commenter stated that the **Federal Register** notice accompanying the DEA attempts to limit the analysis to consider just the incremental ''administrative costs of the 11 percent of the proposed critical habitat that is not already designated.'' The commenter stated that the screening analysis must include an analysis of the economic impacts of the entire designation that is being proposed.

Our Response: Section 3 of the screening analysis does consider the incremental costs of the proposed rule across all 41,547 square miles proposed as critical habitat for the Canada lynx. In that section, we concluded that section 7-related costs of designating revised critical habitat for the lynx are likely to be limited to the additional administrative effort required to consider adverse modification based in part on the fact that all areas proposed as critical habitat lands are considered to be currently occupied by the species, which provides the species significant baseline protection under the Act. We then estimated the administrative cost of addressing adverse modification during the section 7 consultation at approximately $320,000 per year based on a future consultation rate of 12 formal consultations, 101 informal consultations, and 48 technical assistances per year. Because this estimate may overstate the consultation rate for some field offices that were unable to limit the consultation history to only those areas proposed as critical habitat, it is likely conservative (i.e., it is more likely to overestimate these costs than it is to underestimate them). Section 4 of the screening analysis discusses other, non-section-7 effects of the proposed designation. These effects are only considered in newly added critical habitat, which consisted of 888 mi^2 or two percent of the proposed critical habitat. The analysis of other, non-section-7 costs was limited to newly added areas because these are areas where the revised designation may increase awareness among project proponents of the presence of the lynx and/or the need for lynx conservation. We also note that we carefully considered the Final Economic Analysis prepared for the 2009 designation (IEc, Inc. 2008, entire) when considering areas for exclusion in this final rule under section 4(b)(2) of the ESA.

(39) *Comment:* One commenter stated that the screening analysis fundamentally fails to account for proposed changes to the definition of ''destruction or adverse modification'' currently under consideration at 79 FR 27060. The commenter stated that the Service's conclusion that there will be no meaningful economic impacts is premised on the overlap between restrictions imposed under the jeopardy standard and the destruction or adverse modification standard. The commenter contended that the Service must analyze whether those assumptions hold true in light of proposed regulatory changes to the Service's definition at 50 CFR 402.02. According to the commenter, these concerns are particularly relevant with respect to fire ecology management on dry forest lands in Washington and Wyoming, as the proposed rule for revising the definition of adverse modification indicates that an activity could adversely modify critical habitat by preventing successional changes such as stand-replacing fires.

Our Response: On May 12, 2014, we and the National Marine Fisheries Service published in the **Federal Register** and invited public comment on a proposed rule to revise the definition of ''destruction or adverse modification'' of critical habitat (79 FR 27060–27066). In the proposed rule we stated: ''In proposing a new definition for 'destruction or adverse modification,' and setting out the accompanying clarifying discussion in this Preamble, the Services are establishing prospective standards only. Nothing in these proposed revised regulations is intended to require (now or at such time as these regulations may become final) that any previously completed biological opinions must be reevaluated on this basis'' (79 FR 27062). Similarly, we do not intend to evaluate the proposed revised definition's potential implications for this or other critical habitat designations, or to retroactively apply the eventual final definition to previously completed designations.

Regardless, because section 7 consultations addressing the jeopardy standard for lynx already do, and likely will continue to, focus largely on potential impacts to snowshoe hare (i.e., lynx foraging) habitats, we do not expect the revised definition to appreciably diminish the overlap between restrictions imposed under the jeopardy standard and the destruction or adverse modification standard. Additionally, fire ecology management activities discussed by the commenter are unlikely to be undertaken solely to avoid adverse modification to lynx critical habitat resulting from wildfires, but also to protect other uses of forests in which these activities would be undertaken. Therefore, even without the critical habitat designation, fire ecology management activities are likely to occur in these areas.

(40) *Comment:* Multiple commenters expressed concern about increased litigation-related costs associated with the final critical habitat rule. One commenter states that future claims may be brought against Federal agencies and developers alleging that a given project causes ''adverse modification'' of critical habitat or asserting a higher analytical burden under the NEPA as a result of a project's location in critical habitat.

Our Response: The Service does not consider the costs of litigation surrounding the critical habitat rule when considering the economic impacts of the rule itself. The extent to which litigation specifically regarding critical

habitat may add to the costs of the critical habitat designation is uncertain. While designation of critical habitat may stimulate additional legal actions, data do not exist to reliably estimate such impacts. That is, estimating the number, scope, timing, and costs of potential future legal challenges would require significant speculation.

(41) *Comment:* One commenter stated that the screening analysis fails to account for the economic impact associated with unintentional impacts on forest management practices. The commenter stated that critical habitat designations negatively impact forest management practices by either creating too much ''red tape'' or by providing litigation angles to stop forest management projects, resulting in a decrease in forest health, an increase in catastrophic wildfires, and an increase in response to those wildfires.

Our Response: The only forest management practices that may be impacted by the designation of critical habitat are those that occur on Federal lands or which require Federal funding, authorization, or permits. The Federal agency that manages the land or which funds, authorizes, or permits these activities must consult with the Service to ensure that their actions are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their designated critical habitats. This final rule designates critical habitat for lynx only in areas that are currently occupied by lynx and which, therefore, already undergo section 7 consultations for projects that could affect lynx. Because these consultations already focus on impacts to lynx habitats, the additional effort and cost to formally evaluate whether they will destroy or adversely modify designated critical habitat are expected to be minor and thus unlikely to result in unintentional impacts or additional economic or regulatory burdens.

We are aware of no evidence suggesting that the designation of critical habitat will cause a decrease in forest health or an increase in catastrophic wildfires and associated responses, and none was provided by the commenters. Additionally, ecosystem restoration activities intended to reduce the risk of large, stand-replacing fires generally occur outside of lynx habitat in dry and mesic forest types at lower elevations (Interagency Lynx Biology Team 2013, p. 76). Because fire management activities are generally concentrated outside of lynx habitat, we do not expect the critical habitat designation to negatively affect forest management practices intended to decrease the risk of catastrophic wildfires. Finally, as described in our response to comment (40) above, the extent to which critical habitat designation may result in increased litigation is uncertain and speculative.

(42) *Comment:* One commenter stated that the economic screening analysis should include costs of increased wetland mitigation required by the U.S. Army Corps of Engineers or by the U.S. Environmental Protection Agency in critical habitat areas.

Our Response: As stated in Section 2 of the screening analysis, we base our forecast of future consultations on the robust consultation history available for the species as well as supplemental information provided by various Service field offices that consult on lynx. The consultation record does include several consultations for wetland mitigation projects; therefore, the administrative costs related to wetland mitigation activities are included in the estimates of incremental impacts included in the screening analysis. As discussed in Section 3, based on the substantial baseline protections afforded the lynx and the close relationship between adverse modification and jeopardy in occupied habitat, the incremental costs of the critical habitat designation are unlikely to result in any project modifications incremental to (i.e., above and beyond) the baseline.

(43) *Comment:* One commenter stated that economic impacts in Wyoming will be greater than those described in the screening analysis. The commenter stated that, both in perception and reality, the threats of critical habitat designation on multiple-use lands in the expansion area chills activity and will have substantial impacts on economic development and management of other resources. According to the commenter, resource managers in the affected area note that critical habitat creates significant roadblocks for the development of projects that can benefit other wildlife species, recreational opportunities, and local and State economies. The commenter requests that the Service conduct a new economic analysis that considers the real costs of expanding critical habitat in Wyoming.

Our Response: As stated in Section 3 of the screening analysis, we expect incremental costs to be limited to administrative costs based in part on the fact that all areas proposed as critical habitat lands are considered to be currently occupied by the species, which provides the species significant baseline protection under the Act. To estimate the magnitude of incremental costs, we rely on the robust consultation history as well as outreach to relevant Service field offices and other Federal stakeholders. In addition, the screening analysis considers information from publically available sources and public comments submitted in response to the proposed critical habitat rulemaking. Other, non-section-7 incremental costs are considered in Section 4 of the screening analysis. The commenter did not provide additional, actionable data or evidence of the categories of impacts raised in the public comment that could be used to revise the screening analysis.

(44) *Comment:* One commenter stated that the fact that the screening analysis projects only 1 informal consultation per year in Washington and that the Service's Incremental Effects Memorandum (IEM) indicates that there were 195 informal lynx consultations in the State between 2008 and 2014 cannot be reconciled.

Our Response: As discussed in Section 3 of the screening analysis, geographic locations of the consultation history presented in the IEM were not readily available. Therefore, we contacted each field office to determine the subset of the consultations presented in the IEM that occur within the proposed critical habitat designation. As discussed in footnote 20 of the screening analysis, based on this follow-up, the Washington field office revised its consultation history to reflect only the subset of consultations for projects that occurred in areas proposed as critical habitat. Specifically, the Washington field office indicated that only 4 of the 195 informal consultations occurred within proposed critical habitat. This level of activity corresponds to approximately one informal consultation per year. According to the Washington field office, the relatively low consultation rate in the State of Washington is a reflection of existing conservation agreements and management plans, which minimize the administrative burden of section 7 consultation by precluding the need for action agencies to consult with the Service on each project individually.

(45) *Comment:* One commenter stated that the total cost column in Exhibit 4 of the screening analysis does not reflect the sum of the previous cost columns, and that these errors artificially deflate the related administrative costs.

Our Response: This comment reflects a transcription error. In Exhibit 4 of the screening analysis, the column titled ''Biological Assessment'' actually refers to the total cost of consultation *without* undertaking a biological assessment. Total costs in the columns titled

''Service'', ''Federal Agency'', and ''Third Party'' sum to the number in ''Biological Assessment.'' The column titled ''Total Costs'' refers to the total cost of consultation including a biological assessment. Therefore, the total cost of a biological assessment is the difference between the dollar amounts in ''Total Costs'' and ''Biological Assessment.'' When calculating total impacts, we use the amounts reported in the ''Total Costs'' column. The error in the table actually *overestimated* the costs in the ''Biological Assessment'' column but did not affect the values in the ''Total Costs'' column. Because we relied on the ''Total Costs'' column when calculating total economic impacts, there was no artificial deflation of related administrative costs.

(46) *Comment:* Several commenters stated that the screening analysis should have used administrative cost information from the ''robust consultation history'' rather than a review of consultation records from 2002 adjusted to current dollar values. Another commenter stated that an applicant's participation in a single formal consultation under Section 7 of the Act for an oil and gas project typically costs between $75,000 and $150,000. The commenter stated that, if the cost of addressing critical habitat is approximately 20 to 25 percent of the total cost of consultation, the total incremental administrative costs of consultation would be $18,750 to $37,500, as compared to the per consultation cost of $5,000 used in our analysis. The commenter also stated that the total cost of considering critical habitat in a biological assessment ranges between $10,000 and $50,000.

Our Response: The consultation history for the Canada lynx is limited to information on the number of consultations per year, by field office. The Service does not collect or track information on the costs incurred by each party participating in section 7 consultations. Accordingly, the Canada lynx consultation history does not provide any additional insights on the administrative cost of section 7 consultation.

To estimate the administrative costs associated with section 7 consultation, the screening analysis relied on the best information available. As described in Exhibit 4 of the screening analysis, the consultation cost model is based on (a) data gathered from three Service field offices (including a review of consultation records and interviews with field office staff); (b) telephone interviews with action agency staff (e.g., BLM, Forest Service, U.S. Army Corps of Engineers); and (c) telephone interviews with private consultants who perform section 7 work in support of permittees. In the case of Service and Federal agency contacts, we determined the typical level of effort required to complete several different types of consultations (i.e., hours or days of time), as well as the typical Government Service (GS) level of the staff member performing this work. In the case of private consultants, we interviewed representatives of firms in California and New England to determine the typical cost charged to clients for these efforts (e.g., biological survey, preparation of materials to support a Biological Assessment). The model is periodically updated with new information received in the course of data collection efforts supporting economic analyses and public comment on more recent critical habitat rules. In addition, the GS rates have been updated annually.

Finally, even if the estimated administrative cost of section 7 consultation were adjusted upwards to $87,500 per consultation, the sum of the upper bounds estimates for incremental administrative costs of consultation and biological assessment provided by the commenter, the total incremental impacts ($14 million) still do not approach total costs in excess of $100 million in a given year; therefore it is not considered a ''significant regulatory action'' under the Unfunded Mandates Reform Act (see *Unfunded Mandates Reform Act,* below).

(47) *Comment:* One commenter stated that the designation of critical habitat creates a regulatory assumption that snowmobiling activity will be further curtailed, thereby discouraging future investment that is needed to support continued viability and further growth of the industry. The commenter cited sworn testimony from two members of the Washington State Snowmobile Association (WASSA), which indicates that, during the brief period that the critical habitat designation was in place in Washington, the snowmobiling industry in Washington experienced measurable economic impacts. The commenter states that the screening analysis notes these concerns but fails to meaningfully address this potential impact.

Our Response: Section 4 of the screening analysis discusses potential impacts on snowmobiling in Washington. In this section, we note that in 2001, Washington State University and WASSA conducted a study estimating the annual economic contribution of the entire snowmobiling industry in Washington at approximately $92.7 million (2001 dollars). In response to the 2009 critical habitat designation, WASSA estimated that snowmobiling accounted for nearly $8.5 million in direct expenditures and $4.1 million in indirect spending in the Methow Valley, an area adjacent to designated critical habitat. As discussed in Section 4, annual data on snowmobiling participation in Washington since 2009 are not readily available. As such, existing data are insufficient to quantify the proportion of the annual economic contribution of the snowmobiling industry that may be affected by the final rule. In addition, stakeholders contacted for the 2014 economic analysis do not anticipate the proposed rule to result in any significant changes to the management of snowmobiling activities in Washington State. We also contacted the Maine and Minnesota Service field offices to determine whether or how snowmobiling activities may have been affected as a result of snowmobiling trails proposed in critical habitat designated there since 2009. According to these discussions, no significant changes in snowmobiling activities have been observed since the 2009 designation of critical habitat in Maine and Minnesota or since the preparation of the Final Economic Analysis of the 2009 designation (IEc, Inc. 2008, entire).

(48) *Comment:* One commenter stated that the screening analysis should include costs resulting from the uncertainty and risk imposed on developers of projects located in proposed critical habitat.

Our Response: Section 4 of the screening analysis discusses the possible perceptional effects of the proposed rule on private property values. Specifically, this section discusses comments and concerns submitted in response to previous critical habitat rulemakings that the designation of critical habitat may affect the value of a private property due to the public perception that the Act may preclude, limit, or slow development, or somehow alter the highest and best use of the property. To assess the likelihood of such an outcome, the screening analysis examined data on development activities in areas proposed as critical habitat where the designation of critical habitat increases awareness of the presence of the species or the need for protection of its habitat. Based on the available data, we concluded that, due to low population densities, existing zoning laws, and the distance of proposed critical habitat areas from existing development or public infrastructure (e.g., public roads), the proposed critical habitat designation is

unlikely to result in measurable perceptional effects. The commenter did not provide data or information that could be used to revise the screening analysis to consider the potential for project developers to face greater uncertainty or risk due to the proposed rule.

(49) *Comment:* Multiple commenters stated that the screening analysis omits the economic benefits of critical habitat designation. One commenter cited increased recreational use of forests as a result of decreased forest degradation as an example of these benefits. Another commenter states that this one-sided analysis has a distorting effect as readers of the analysis may interpret the results as indicating that lynx protection is ''costly'' in a net sense. The commenter stated that the screening analysis provides no discussion as to whether any efforts were expended to review the literature regarding the availability of estimates of the benefit of lynx habitat conservation.

Our Response: As stated in Section 5 of the screening analysis, the primary intended benefit of critical habitat designation for the Canada lynx is to support the species' long-term conservation. Critical habitat designation may also generate ancillary benefits, which are defined as favorable impacts of a rulemaking that are typically unrelated, or secondary, to the statutory purpose of the rulemaking (U.S. Office of Management and Budget 2003, entire). Critical habitat aids in the conservation of species specifically by protecting the PCEs on which the species depends. To this end, management actions undertaken to conserve a species or habitat may have coincident, positive social welfare implications, such as increased recreational opportunities in a region or improved property values on nearby parcels.

As described in Section 2 of the screening analysis, incremental changes in land management as a result of the designation of critical habitat are unlikely. This finding is based primarily on the fact that all areas proposed as critical habitat are considered occupied by the species and, therefore, receive baseline protection from the listing of the species under the Act. Thus, in this instance, critical habitat designation will likely add minimal conservation benefits to those already provided by baseline conservation efforts (e.g., efforts resulting from the listing of the species under the Act). For the same reason, it follows that the designation will likely add minimal ancillary benefits above those provided in the baseline.

Summary of Changes From Proposed Rule

In our proposed rule, published September 26, 2013 (78 FR 59430), we proposed to designate 41,547 mi^2 (107,607 km^2) of critical habitat for the Canada lynx DPS in five units in six States. The proposed critical habitat represented 23,811 mi^2 (61,669 km^2; 57 percent) on Federal lands, 4,129 mi^2 (10,695 km^2; 10 percent) on State lands, 13,050 mi^2 (33,800 km^2; 31 percent) on private lands, 535 mi^2 (1,385 km^2; 1 percent) on Tribal lands, and 23 mi^2 (58 km^2; 0.1 percent) on lands owned by local municipalities or in ''other'' ownership.

We received a number of site-specific comments related to critical habitat for the Canada lynx; completed our analysis of areas considered for exemption under section 4(a)(3)(B)(i) of the Act and for exclusion under section 4(b)(2) of the Act; reviewed the application of our criteria for identifying critical habitat across the range of the lynx DPS to refine our designation; and completed and carefully considered the final economic analysis of the designation as proposed. We fully considered all substantive comments from peer reviewers, States, Tribes, and the public on the proposed critical habitat rule and the associated economic and environmental analyses to develop this final critical habitat designation for the lynx DPS. This final rule incorporates changes to our proposed critical habitat based on the comments we received and to which we have responded in this document; reflects refined lynx habitat mapping provided by Federal and State partners in Idaho, Montana, and Wyoming; and considers completed final management and habitat conservation plans for lynx in Maine, Montana, and Washington.

With this final rule, we designate 38,954 mi^2 (100,891 km^2) of critical habitat for the Canada lynx DPS in five units in six States. This final designation represents 23,402 mi^2 (60,612 km^2; 60 percent) on Federal lands, 3,945 mi^2 (10,217 km^2; 10 percent) on State lands, 11,584 mi^2 (30,003 km^2; 30 percent) on private lands, and 23 mi^2 (59 km^2; 0.1 percent) on lands owned by local municipalities or in ''other'' ownership. Changes from the proposed rule are described below for each critical habitat unit.

Unit 1—We have excluded all Tribal lands, about 96 mi^2 (248 km^2), from critical habitat in this unit; this area is slightly larger than the area identified in the proposed rule (87 mi^2 (225 km^2)) due to improved mapping data provided by the Tribes. We have corrected the list of Tribes whose lands occur within the final critical habitat boundary—only Passamaquoddy Tribe and Penobscot Indian Nation lands are within the boundary, and these lands are excluded from this final designation. We have also excluded about 943 mi^2 (2,443 km^2) of private lands enrolled in the Natural Resources Conservation Service's Healthy Forest Reserve Program (HFRP). With this final rule, we designate 10,123 mi^2 (26,218 km^2) of critical habitat in this unit, which represents a 1,039-mi^2 (2,691-km^2; 9.3-percent) reduction from the proposed designation. See Consideration of Impacts under Section 4(b)(2) of the Act, below, for details regarding lands excluded from designation in this unit.

Unit 2—We have excluded about 78 mi^2 (202 km^2) of Tribal lands from critical habitat in this unit. With this final rule, we designate 8,069 mi^2 (20,899 km^2) of critical habitat in this unit, which represents a 78-mi^2 (202-km^2, 1.0-percent) reduction from the proposed designation. See Consideration of Impacts under Section 4(b)(2) of the Act, below, for details regarding lands excluded from designation in this unit.

Unit 3—We have excluded from critical habitat in this unit about 370 mi^2 (958 km^2) of Tribal lands as well as 271 mi^2 (702 km^2) of State lands managed in accordance with the MDNRC Forested State Trust Lands HCP. See Consideration of Impacts under Section 4(b)(2) of the Act, below, for details regarding lands excluded from designation in this unit. We have added about 61 mi^2 (158 km^2) of Federal land and 39 mi^2 (101 km^2) of private lands; and we have removed about 73 mi^2 (189 km^2) of Federal land, 77 mi^2 (189 km^2) of private land, and 28 mi^2 (73 km^2) of State Trust land in the vicinity of Flathead National Forest in Montana due to improved lynx habitat mapping on this National Forest (U.S. Forest Service 2013a, entire)—a net reduction of 78 mi^2 (202 km^2) in this area. However, due to improved ownership data, the final designation represents a net increase of about 136 mi^2 (352 km^2) of Federal lands in this unit. With this final rule, we designate 9,783 mi^2 (25,337 km^2) of critical habitat in this unit, which represents a 691-mi^2 (1,790-km^2; 6.6-percent) reduction from the proposed designation.

Unit 4—We have excluded about 164 mi^2 (425 km^2) of State lands managed in accordance with the WDNR Lynx Habitat Management Plan. With this final rule, we designate 1,834 mi^2 (4,751 km^2) of critical habitat in this unit, which represents a 164-mi^2 (425-km^2, 8.2-percent) reduction from the

proposed designation. See Consideration of Impacts under Section 4(b)(2) of the Act, below, for details regarding lands excluded from designation in this unit.

Unit 5—We have excluded 1.3 mi^2 (3.4 km^2) of State land managed in accordance with the MDNRC HCP. See Consideration of Impacts under Section 4(b)(2) of the Act, below, for details regarding lands excluded from designation in this unit. We have also removed about 543 mi^2 (1,406 km^2) of Federal lands, 6 mi^2 (16 km^2) of State lands, and 71 mi^2 (184 km^2) of private lands on and adjacent to the Gallatin and Custer National Forests in Montana and BLM lands in Wyoming due to improved lynx habitat mapping and information from those agencies (U.S. Fish and Wildlife Service 2013a, entire; 2013b, entire; U.S. Forest Service 2013b, entire). With this final rule, we designate 9,146 mi^2 (23,687 km^2) of critical habitat in this unit, which represents a 620-mi^2 (1,606-km^2; 6.4-percent) reduction from the proposed designation in this unit.

Overall, this final designation represents a reduction on (1) Federal lands of 409 mi^2 (1,059 km^2; 1.7 percent); (2) State lands of 184 mi^2 (477 km^2; 4.5 percent); (3) private lands of 1,466 mi^2 (3,797 km^2; 11.2 percent), and (4) Tribal lands of 535 mi^2 (1,386 km^2; 100 percent) from the area proposed for designation. With this final rule, we designate 38,954 mi^2 (100,891 km^2) of critical habitat for the Canada lynx DPS. This represents a 2,593-mi^2 (6,716-km^2; 6.2-percent) reduction from the area identified in the September 26, 2013, proposed rule (78 FR 59430).

Revised Definition of the Contiguous United States Distinct Population Segment of the Canada Lynx

In the final listing rule for the Canada lynx, dated March 24, 2000, the Service defined the contiguous United States DPS of lynx based on the international boundary with Canada and State boundaries of all 14 States in the historic and current range of lynx (65 FR 16052; 74 FR 66937). With that definition, New Mexico was not included in the listed area because no lynx occurred there, historic records did not show lynx in the State, and it lacked lynx habitat.

On December 17, 2009, the Service published a 12-month ''warranted but precluded'' finding in the **Federal Register** on a petition to expand the listing of the Canada lynx to include the State of New Mexico (74 FR 66937). That finding was made in response to an August 8, 2007, petition from a coalition of environmental groups and a 2008 settlement agreement. In the finding, the Service acknowledged that lynx associated with a lynx population introduced into Colorado were ''regularly and frequently'' crossing the State boundary between Colorado and New Mexico and that, when they did, they were no longer protected by the Act because New Mexico was not included in the listed DPS area. In 2011, as part of a settlement agreement reached in Multi-District litigation, the Service agreed to amend the listing rule to include New Mexico so that lynx entering New Mexico from Colorado would no longer lose Federal protection under the Act upon crossing the State boundary.

We have determined that lynx entering New Mexico, or any other States not currently included in the DPS as described in the 2000 final listing rule, should not lose their protection under the Act upon doing so. Therefore, with this final rule, we have rescinded the State-boundary-based definition of the range of the contiguous United States lynx DPS and replace it in regulation with a definition of the DPS range that extends the Act's protections to lynx ''where found within the contiguous United States.'' This change ensures that all lynx in the contiguous United States receive protection under the Act regardless of where they occur, including (but not limited to) New Mexico.

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 prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological

features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan or recovery outline for the species (if one has been completed), 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.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the lynx DPS from studies of this species' habitat, ecology, and life history as described in the Background and Critical Habitat sections of the proposed rule to designate critical habitat published in the **Federal Register** on September 26, 2013 (78 FR 59430), and in the information presented below. Additional information on the habitat, ecology, and life history of the lynx DPS can be found in the documents listed above under Previous Federal Actions. We have determined that lynx require the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

Boreal Forest Landscapes

Lynx populations respond to biotic and abiotic factors at different scales. At the regional scale, boreal forests, snow conditions, and competitors (especially bobcat) influence the species' range (Aubry *et al.* 2000, pp. 378–380; McKelvey *et al.* 2000a, pp. 242–253; Hoving *et al.,* 2005 p. 749). At the landscape scale within each region, natural and human-caused disturbance processes (e.g., fire, wind, insect infestations, forest management, and development) may influence the spatial and temporal distribution of lynx populations by affecting the distribution of high-quality habitat for snowshoe hares (Agee 2000, pp. 47–73; Ruediger *et al.* 2000, pp. 1–3, 2–2—2–6, 7–3). At the stand-level (vegetation community) scale, the quality, quantity, and juxtaposition of habitats influence home range location and size, productivity, and survival (Aubry *et al.* 2000, pp. 380–390; Vashon *et al.* 2005a, pp. 9–11). At the smaller substand (within-stand) scale, the spatial distribution and abundance of prey and microclimate likely influence lynx movements, hunting behavior, and den and resting site locations (Organ *et al.* 2008, entire; Squires *et al.* 2008, entire; Moen and Burdett 2009, p. 16; Squires *et al.* 2010, pp. 1648, 1654–1657).

Generally, the physical and biological features of critical habitat for lynx are found within relatively large landscapes (large enough to support multiple lynx home ranges) in what is broadly described as the boreal forest or cold temperate forest (Frelich and Reich 1995, p. 325; Agee 2000, pp. 43–46). That is, no individual small-scale area or site is likely to have all of the physical and biological features lynx need to survive. However, small lynx populations can persist in areas with relatively small areas of boreal forest habitat, as they do in the Garnet Mountains in western Montana and in the Wyoming Range in northwestern Wyoming (Squires 2014, pers. comm.). Lynx in the DPS use very large areas as home ranges that incorporate landscape

features that may be widely separated from one another to satisfy all of their life-history needs. In contrast to the extensive homogenous boreal forest found in the core of lynx range in northern Canada and Alaska, the southern terminus of the boreal forest type that extends into parts of the northern contiguous United States becomes transitional with other forest types—the Acadian forest in the Northeast (Seymour and Hunter 1992, pp. 1, 3), deciduous temperate forest in the Great Lakes, and subalpine forest in the west (Agee 2000, pp. 43–46). In this rule, we use the term ''boreal forest'' because it generally encompasses most of the vegetative descriptions of the transitional forest types that comprise lynx habitat in the contiguous United States (Agee 2000, pp. 40–41).

Because of the transitional nature and patchy distribution of boreal forest in the contiguous United States, species that are specifically adapted to the classic boreal forest farther north, like the lynx, must contend with aspects of their habitat at the southern extent of the boreal forest for which they are not as well-adapted. For example, southern transitional boreal forests often have lower landscape snowshoe hare densities than boreal forests further north (Wolff 1980, pp. 123–128; Buehler and Keith 1982, pp. 24, 28; Koehler 1990, p. 849; Koehler and Aubry 1994, p. 84). This difference requires lynx in the contiguous United States to incorporate more land area into their home ranges than lynx do in the north to acquire adequate food (Mowat *et al.* 2000, pp. 265, 277–278). At some point, landscape hare densities become too low, making some areas incapable of supporting lynx. Larger home ranges likely require more energy output associated with greater foraging effort (Apps 2000, p. 364) and possibly increased exposure to predation and other mortality factors than lynx face in the core of their range. All of these factors likely lead to lower reproductive output and more tenuous conservation status in many parts of the DPS relative to those in Canada and Alaska (Buskirk *et al.* 2000a, p. 95).

Throughout the range of the DPS, lynx habitat occurs within boreal forest vegetation types that support relatively high landscape densities of snowshoe hares and have deep snow for extended periods. In eastern North America, lynx are strongly associated with areas of deep snowfall and large (40-mi^2 (100-km^2)) landscapes that have been heavily cut and treated with herbicides and have a high proportion of young regenerating forest (Hoving 2001, pp. 75, 143). Hoving *et al.* (2004, p. 291) concluded that the broad geographic distribution of lynx in eastern North America is most influenced by snowfall, but within areas of similarly deep snowfall, measures of forest succession become more important factors in determining lynx distribution. Second-order habitat selection in the Acadian forest region is influenced by hare density (a surrogate for early successional forest) and by mature conifer forest, despite its association with lower hare densities (Simons-Legaard *et al.* 2013b, pp. 573–574). In the Northern Rocky Mountains, lynx appear to be less tied to early successional forest stages; high lynx use and hare densities, especially in the critical winter season, occur in mature multistoried forest stands where conifer branches reach the snow surface and thereby provide hare forage (Squires *et al.* 2006a, p. 15; Squires *et al.* 2010, pp. 1653–1657; Berg *et al.* 2012, entire).

Boreal forests used by lynx are generally cool, moist, and dominated by conifer tree species, primarily spruce and fir (Agee 2000, pp. 40–46; Aubry *et al.* 2000, pp. 378–382; Ruediger *et al.* 2000, pp. 4–3, 4–8—4–11, 4–25—4–26, 4–29—4–30). Boreal forest landscapes used by lynx are heterogeneous mosaics of vegetative cover types and successional forest stages created by natural and human-caused disturbances (McKelvey *et al.* 2000c, pp. 426–434). In many places, periodic vegetation disturbances stimulate development of dense understory or early successional habitat for snowshoe hares (Ruediger *et al.* 2000, pp. 1–3—1–4, 7–4—7–5). In Maine, lynx are positively associated with landscapes that were clearcut 15 to 35 years previously (Hoving *et al.* 2004, p. 291; Simons-Legaard *et al.* 2013b, pp. 573–574), some of which were also treated with herbicides to promote conifer regeneration (Scott 2009, p. 7). In other places, such as the Northern Rocky Mountains and Greater Yellowstone Area, mature multistoried conifer forests as well as dense regenerating conifer stands provide foraging habitat for lynx (Squires *et al.* 2010, pp. 1648, 1653–1657; Berg *et al.* 2012, entire).

The overall quality of the boreal forest landscape and the juxtaposition of stands of high-quality habitat within the landscape are important for both lynx and snowshoe hares in that both can influence connectivity or movements between habitat patches, availability of food and cover, and spatial structuring of populations or subpopulations (Hodges 2000, pp. 184–195; McKelvey *et al.* 2000c, pp. 431–432; Walker 2005, p. 79). For example, lynx foraging habitat must be near denning habitat to allow females to adequately provision dependent kittens, especially when the kittens are relatively immobile (Moen *et al.* 2008a, p. 1507; Vashon *et al.* 2012, p. 16). In north-central Washington, hare densities are higher in landscapes with an abundance of dense boreal forest interspersed with small patches of open habitat, in contrast to landscapes composed primarily of open forest interspersed with few patches containing dense vegetation (Walker 2005, p. 79; Lewis *et al.* 2011, p. 565). Similarly, in northwest Montana, connectivity of dense patches within the forest matrix benefits snowshoe hares (Ausband and Baty 2005, p. 209). In mountainous areas, lynx appear to prefer relatively gentle slopes (Apps 2000, p. 361; McKelvey *et al.* 2000d, p. 333; von Kienast 2003, p. 21, Table 2; Maletzke 2004, pp. 17–18).

Individual lynx require large areas of boreal forest landscapes to support their home ranges and to facilitate dispersal and exploratory travel. The size of lynx home ranges is strongly influenced by the quality of the habitat, particularly the abundance of snowshoe hares, in addition to other factors such as gender, age, season, and density of the lynx population (Aubry *et al.* 2000, pp. 382–385; Mowat *et al.* 2000, pp. 276–280). Generally, females with kittens have the smallest home ranges while males have the largest home ranges (Moen *et al.* 2005, p. 11; Burdett *et al.* 2007, p. 463). Reported average home range sizes vary greatly from 12 mi^2 (31 km^2) for females and 26 mi^2 (68 km^2) for males in Maine (Vashon *et al.* 2005a, p. 7), 8 mi^2 (21 km^2) for females and 119 mi^2 (307 km^2) for males in Minnesota (Moen *et al.* 2005, p. 12), and 34 mi^2 (88 km^2) for females and 83 mi^2 (216 km^2) for males in northwest Montana (Squires *et al.* 2004a, p. 13). Home range sizes of lynx in the population introduced into Colorado averaged 29 mi^2 (75 km^2) among reproductive females, 40 mi^2 (103 km^2) among attending (reproductive) males, and 252 mi^2 (654 km^2) among all non-reproductive lynx (Shenk 2008, pp. 1, 10). Based on data presented in Shenk (2008, p. 10) and combining reproductive and non-reproductive lynx, home range estimates for lynx in Colorado averaged 181 mi^2 (470 km^2) for females and 106 mi^2 (273 km^2) for males.

Forest Type Associations in the Contiguous United States

Maine

Stands of regenerating sapling (15–35 years old) spruce-fir forest that provide dense cover are preferred by both snowshoe hares and lynx in Maine

(Robinson 2006, pp. 26–36; Vashon *et al.* 2012, p. 15). Lynx are more likely to occur in large (40 mi² (100 km²)) landscapes with regenerating forest, and less likely to occur in landscapes with very recent clear-cut or partial harvest (Hoving *et al.* 2004, pp. 291–292). Regenerating stands used by lynx generally develop after forest disturbance and are characterized by dense horizontal structure and high stem density within a meter of the ground. These habitats support high snowshoe hare densities (Homyack 2003, p. 63; Fuller and Harrison 2005, pp. 716, 719; Vashon *et al.* 2005a, pp. 10–11). At the stand scale, lynx in northwestern Maine select older (11- to 26-year-old), tall (15 to 24 feet (ft) (4.6 to 7.3 meters (m)) regenerating clear-cut stands and older (11- to 21-year-old) partially harvested stands (Fuller *et al.* 2007, pp. 1980, 1983–1985). At the home range scale, lynx also select mature conifer forest (Simons-Legaard *et al.* 2013b, pp. 572–573). Lynx may use partial harvested and mature conifer stands associated with low hare densities because of increased ease of travel and prey access along the extensive edges with high-quality (regenerating clear-cut) habitats (Simons-Legaard *et al.* 2013b, p. 574). Most of the high-quality hare and lynx habitat in northern Maine is the result of landscape-scale clear-cut timber harvesting in response to a spruce budworm outbreak in the 1970s–1980s (Simons 2009, pp. 64, 218). Some of these clearcuts were also treated with herbicides to promote conifer regeneration by suppressing deciduous tree species. Both the current amount of high-quality habitat and the lynx population in Maine are likely larger than occurred prior to European settlement, when a relatively smaller proportion of the forest was in an early successional stage (Lorimer 1977, entire; Vashon *et al.* 2012, pp. 45, 56), likely because the natural disturbance regime resulted in smaller frequent disturbances and long intervals between larger disturbances.

Minnesota

In Minnesota, lynx primarily occur in the Northern Superior Uplands Ecological Section of the Laurentian Mixed Forest Province. Historically, this area was dominated by red pine (*Pinus resinosa*) and white pine (*P. strobus*) mixed with aspen (*Populus* spp.), paper birch (*Betula papyrifera*), spruce, balsam fir (*A. balsamifera*) and jack pine (*P. banksiana*) (Minnesota Department of Natural Resources [Minnesota DNR] 2003, p. 2). Lynx habitats in Minnesota are associated with Lowland Conifer, Upland Conifer, Mixed Conifer, and Regenerating Forest cover types, with lynx selecting the latter because it provides snowshoe hare habitat (Moen *et al.* 2008a, p. 1511; Moen *et al.* 2008b, pp. 18–29). Moen *et al.* (2008b, pp. 23–25) reported that lynx also select for the edges between different cover types, presumably because they can more efficiently capture hares along the edges between stands than in the dense interior understory of regenerating stands.

Northern Rocky Mountains (Idaho, Montana, and Northwestern Wyoming)

In the Northern Rocky Mountains, most lynx occurrences are associated with the Rocky Mountain Conifer Forest or Western Spruce-Fir Forest vegetative class (Küchler 1964, p. 4; McKelvey *et al.* 2000a, p. 246) and most occur above 4,101 ft (1,250 m) elevation (Aubry *et al.* 2000, pp. 378–380; McKelvey *et al.* 2000a, pp. 243–245). The dominant vegetation that constitutes lynx habitat in these areas is subalpine fir (*A. lasiocarpa*), Engelmann spruce, and lodgepole pine (Aubry *et al.* 2000, p. 379; Ruediger *et al.* 2000, pp. 4–8—4–10). Within the boreal forest landscape, lodgepole pine is seral to (i.e., is an earlier successional stage) subalpine fir and Engelmann spruce, which are climax forest habitat types. In winter, lynx preferentially use mature multistoried stands, predominantly spruce-fir, with dense horizontal cover and avoid clearcuts and large forest openings (Squires *et al.* 2010, pp. 1648, 1653–1656). In summer, lynx also select young stands with dense spruce-fir saplings and do not appear to avoid openings (Squires *et al.* 2010, pp. 1648, 1654–1655). Dry forest types (e.g., ponderosa pine (*Pinus ponderosa*), dry Douglas-fir (*Pseudotsuga menziesii*)) do not provide lynx habitat (Berg 2009, p. 20; Squires *et al.* 2010, p. 1655).

Washington

In the North Cascades in Washington, most lynx occur above 4,101 ft (1,250 m) (McKelvey *et al.* 2000a, p. 243, 2000d, p. 321; von Kienast 2003, p. 28, Table 2; Maletzke 2004, p. 17). In this area, lynx select Engelmann spruce—subalpine fir forest cover types in winter (von Kienast 2003, p. 28; Maletzke 2004, pp. 16–17; Koehler *et al.* 2008, p. 1518). As in the Northern Rockies, lodgepole pine is a dominant tree species in the earlier successional stages of these climax cover types. Seral (intermediate stage of ecological succession) lodgepole stands contain dense understories and, therefore, receive high use by snowshoe hares and lynx (Koehler 1990, pp. 847–848; McKelvey *et al.* 2000d, pp. 332–335). Lynx in this area avoid Douglas-fir and ponderosa pine forests, openings, recent burns, open canopy and understory cover, and steep slopes (Koehler *et al.* 2008, p. 1518).

Southern Rocky Mountains (Western Colorado, Northern New Mexico, Southern Wyoming)

Lynx in the population introduced into Colorado use high-elevation (generally above 9,500 ft (2,900 m)) mature Engelmann spruce/subalpine fir, mixed spruce/fir/aspen, and riparian/mixed riparian habitats in Subalpine and Upper Montane forest zones, and avoid lower elevation Montane forests of Douglas fir and ponderosa pine (Shenk 2006, p. 10; Shenk 2008, pp. 1–2, 12, 15; Devineau *et al.* 2010, p. 525; Ivan 2011a, pp. 21, 27). However, it remains uncertain whether these habitats can sustain a viable lynx population over time (Shenk 2008, p. 16; Shenk 2010, pp. 2, 5–6, 11). Lynx from the population introduced into Colorado also have wandered into mountainous areas of northern New Mexico that contain relatively small and fragmented areas of similar high-elevation spruce/fir and cold mixed-conifer habitats (U.S. Forest Service 2009, pp. 5–10). There is no evidence that lynx occupied these areas historically, no reproduction has been documented among lynx from the population introduced into Colorado that have traveled into northern New Mexico, and habitats in New Mexico are thought to be incapable of supporting a self-sustaining lynx population (U.S. Forest Service 2009, pp. 2, 10, 16–17).

Based on the information above, we identify boreal forest landscapes that support relatively high densities of snowshoe hares, have deep snow for extended periods, and are large enough to support multiple lynx home ranges over time to contain the physical and biological features needed to support and maintain lynx populations over time and which, therefore, are essential for the conservation of the lynx DPS.

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

Food (Snowshoe Hares)

Snowshoe hare density is the most important factor explaining the persistence of lynx populations (Steury and Murray 2004, p. 136). Snowshoe hare density differences among areas of boreal forest in the contiguous United States are also thought to explain many lynx distribution patterns historically and at present. While seemingly all of the physical aspects usually associated

with lynx habitat may be present in a landscape, if snowshoe hare densities are inadequate to support reproduction, recruitment, and survival over time, lynx populations will not persist. Minimum snowshoe hare densities necessary to maintain lynx populations across the range of the DPS have not been determined, although Ruggiero *et al.* (2000, pp. 446–447) suggested that at least 0.2 hares per ac (0.5 hares per ha) may be necessary. Hare densities in areas known to support lynx home ranges in the contiguous United States are 0.26 hares per ac (0.64 hares per ha) in northeast Minnesota (Moen *et al.* 2012, p. 352) and 0.30 hares per ac (0.74 hares per ha) in northern Maine (Simons-Legaard *et al.* 2013b, p. 574). Hare density in Voyageurs National Park in northern Minnesota was estimated at 0.14 hares per ac (0.35 hares per ha) and does not support resident breeding lynx (Moen *et al.* 2012, pp. 352–354). In northern Maine, landscapes with hare densities less than 0.2 hares per ac (0.5 hares per ha) are not occupied by lynx (Simons-Legaard *et al.* 2013b, pp. 567, 575).

Steury and Murray (2004, entire) modeled lynx and snowshoe hare populations and predicted that a minimum of 0.4 to 0.7 hares per ac (1.1 to 1.8 hares per ha) would be required for persistence of a reintroduced lynx population in the portion of the lynx range in the contiguous United States. In areas used by the introduced lynx population in west-central Colorado, Zahratka and Shenk (2008, pp. 906, 910) reported hare densities ranging from 0.03 to 0.5 hares per ac (0.08 to 1.32 hares per ha) in mature Engelmann spruce-subalpine fir stands and from 0.02 to 0.14 hares per ac (0.06 to 0.34 hares per ha) in mature lodgepole pine stands. In ''purportedly good'' hare habitat also in west-central Colorado in the area used by the introduced population, Ivan (2011b, pp. iv–v, 71, 92) estimated summer hare densities of 0.08 to 0.27 hares per ac (0.2 to 0.66 hares per ha) in stands of ''small'' lodgepole, 0.004 to 0.01 hares per ac (0.01 to 0.03 hares per ha) in ''medium'' lodgepole, and 0.004 to 0.1 hares per ac (0.01 to 0.26 hares per ha) in spruce-fir stands.

The boreal forest landscape is naturally dynamic and usually contains a mosaic of forest stand successional stages. In some areas, particularly in the eastern portion of the DPS, stands that support high densities of snowshoe hares are of a young successional stage and are in a constant state of transition to other more mature stages. Conversely, if the vegetation potential (or climax forest type) of a particular forest stand is conducive to supporting abundant snowshoe hares, it likely will also go through successional stages that are of lesser value as lynx foraging habitat (i.e., times when snowshoe hare abundance is low) or lynx denning habitat (Agee 2000, pp. 62–72; Buskirk *et al.* 2000b, pp. 403–408) as part of a natural forest succession process. For example, a boreal forest stand where there has been recent disturbance, such as fire or timber harvest, resulting in little or no understory structure will support fewer snowshoe hares and, therefore, lower quality lynx foraging habitat. However, that temporarily low-quality stand would regenerate into higher quality snowshoe hare (lynx foraging) habitat within 10 to 25 years, depending on local conditions (Ruediger *et al.* 2000, pp. 1–3—1–4, 2–2—2–5). The continuation of this naturally dynamic pattern of succession exhibited in boreal forests is crucial for lynx survival due to their dependence on intermediate successional stages in many areas. In places where lynx are dependent on mature forest stages, forest stand turnover still occurs, but on a longer time scale requiring the ability to recruit new mature forest stands as others are lost to fire, insect infestation, or human activities.

Forest management techniques that thin the understory may reduce habitat quality for hares and, thus, for lynx (Ruediger *et al.* 2000, pp. 2–4—3–2; Hoving *et al.* 2004, pp. 291–292; Homyack *et al.* 2007, entire), at least temporarily (Griffin and Mills 2007, entire). Stands may continue to provide good snowshoe hare habitat for many years until woody stems in the understory become too sparse, as a result of undisturbed forest succession or management (e.g., clearcutting or thinning) (Griffin and Mills 2007, entire). Thus, if the vegetation potential of the stand is appropriate, a stand that is not currently in a condition that supports abundant snowshoe hares for lynx foraging or coarse woody debris for den sites would improve as habitat for snowshoe hares (and thus lynx foraging) with time. Therefore, we consider lynx habitat to include forested areas with the potential, through natural succession, to produce high-quality snowshoe hare habitat, regardless of their current stage of forest succession.

Snowshoe hares feed on conifers, deciduous trees, and shrubs (Hodges 2000, pp. 181–183), and they prefer boreal forest stands that have a dense horizontal understory to provide food, as well as cover and security from predators. Snowshoe hare density is correlated to understory cover between about 3 and 10 ft (1 to 3 m) above the ground or snow level (Hodges 2000, p. 184). Snowshoe hares most heavily use stands with shrubs, stands that are densely stocked, and stands at ages where branches provide more lateral cover (Hodges 2000, p. 184; Lewis *et al.* 2011, pp. 561, 564–565). Generally, earlier successional forest stages provide a greater density of horizontal understory and support more snowshoe hares (Buehler and Keith 1982, p. 24; Wolfe *et al.* 1982, pp. 668–669; Koehler 1990, pp. 847–848; Hodges 2000, pp. 184–191; Griffin 2004, pp. 84–88). However, snowshoe hares can be abundant in mature forests with dense understories, particularly in the western part of the DPS range (Griffin 2004, pp. 53–54, 88; Hodges *et al.* 2009, p. 876; Squires *et al.* 2010, pp. 1648, 1653–1657; Berg *et al.* 2012, pp. 1484–1488), and such mature forests may be a source of hares for other adjacent forest types (Griffin and Mills 2009, pp. 1492, 1495–1496).

In Maine, snowshoe hare densities are highest in regenerating softwood (spruce and fir) and mixed-wood stands with high conifer stem densities (Homyack 2003, p. 195; Fuller and Harrison 2005, pp. 716, 719; Robinson 2006, p. 69). However, when exploiting high-density hare habitats, lynx focus foraging efforts in stands with intermediate hare densities and structural complexity that occurred at the edges of the highest density habitat, suggesting that lynx balance between hare abundance and accessibility (Fuller and Harrison 2010, pp. 1276–1277; Simons-Legaard *et al.* 2013b, p. 574). In northeastern Minnesota, lynx use areas with relatively higher proportions of coniferous forest, young (10- to 30-year-old) regenerating forest, and shrubby grassland, and these habitats support the highest hare densities (McCann and Moen 2011, pp. 509, 515).

In montane and subalpine forests in northwest Montana, the highest snowshoe hare densities in summer are generally in younger stands with dense forest structure, but winter hare densities are as high or higher in mature stands with dense understory forest structure (Griffin 2004, p. 53). In Montana in winter, hare and lynx use multistoried stands, often in older-age classes, where the tree boughs touch the snow surface but where the stem density is low (Squires *et al.* 2006a, p. 15; Griffin and Mills 2009, pp. 1492, 1495–1496; Squires *et al.* 2010, pp. 1648, 1653–1656). In the North Cascades of north-central Washington, snowshoe hare density was highest in 20-year-old lodgepole pine stands where the average density of trees and shrubs was 15,840 stems per ha (6,415 stems

per ac) (Koehler 1990, pp. 847–848), and hare density was associated with large shrubs and saplings within a stand (Lewis *et al.* 2011, pp. 561, 564–565). In western Wyoming, late-seral multistoried forests support a greater abundance of snowshoe hares than regenerating even-aged forests (Berg *et al.* 2012, p. 1). Similarly, in Yellowstone National Park, where hares were rare and patchily distributed, hare presence and relative abundance are linked to mature forest stands (Hodges *et al.* 2009, p. 876). In western Colorado areas used by the introduced lynx population, Zahratka and Shenk (2008, pp. 906, 910) estimated higher hare densities in spruce-fir stands than in lodgepole pine, but Ivan (2011b, pp. iv, 71, 92) estimated hare densities as highest in stands of small lodgepole pine, intermediate in spruce-fir stands, and lowest in stands of medium lodgepole pine.

Habitats supporting abundant snowshoe hares must be present in a sufficient proportion (though not necessarily the majority) of the landscape to support a viable lynx population. Landscapes with more contiguous hare habitat, or where patches of high-quality habitat occur in a matrix with patches of similar quality, support more hares than fragmented habitats or those in which patches of hare habitat occur within a matrix of poor-quality habitat (Lewis *et al.* 2011, p. 565). Broad-scale snowshoe hare density estimates are not available for all of the areas being designated as lynx critical habitat. Available snowshoe hare density estimates are helpful in determining where snowshoe hares exist, but each estimate is specific to both a location and a point in time. Due to intrinsic, rapid fluctuations often seen in snowshoe hare populations, density estimates cannot be considered definitive for any particular area. If enough data were gathered for a specific area over several years, these data could be used to calculate an average density (with margins of error included). Lynx do not occur everywhere within the range of snowshoe hares in the contiguous United States (Bittner and Rongstad 1982, p. 146; McCord and Cardoza 1982, p. 729). This may be due to inadequate abundance, density, or spatial distribution of hares in some places, to the absence of snow conditions that would allow lynx to express a competitive advantage over other hare predators, or to a combination of these factors.

Based on the information above, we identify relatively high densities of snowshoe hares broadly and consistently distributed across boreal forest landscapes to be a physical or biological feature needed to support and maintain lynx populations over time and which, therefore, is essential to the conservation of the lynx DPS.

Snow Conditions (Other Physiological Requirements)

Snow conditions also determine the distribution of lynx and snowshoe hares. Deep, fluffy snow conditions likely restrict potential lynx competitors such as bobcat or coyote from effectively encroaching on or hunting hares in winter lynx habitat. In addition to snow depth, other snow properties, including surface hardness or sinking depth, also influence lynx foraging success and, ultimately may be important factors in the spatial, ecological, and genetic structuring of the species (Stenseth *et al.* 2004, entire). Gonzalez *et al.* (2007, pp. 4, 7) compared 496 lynx locations with snow cover over the period 1966–2005 and concluded that lynx require 4 months (December through March) of continuous winter snow coverage.

In eastern North America, snowfall is the strongest predictor of lynx occurrence at a regional scale (Hoving *et al.* 2005, p. 746, Table 5), and lynx in the northeastern United States are most likely to occur in areas with a 10-year mean annual snowfall greater than 105 in (268 cm) (Hoving 2001, p. 75; Hoving *et al.* 2005, p. 749). The Northern Superior Uplands section of northeast Minnesota, which supports a resident lynx population, receives more of its precipitation as snow than any other part of the State, and has the longest period of snow cover (Minnesota DNR 2003, p. 2). Average annual snowfall from 1971 to 2000 in this area was generally greater than 55 in (149 cm) (University of Minnesota 2013).

Information on average snowfall or snow depths in mountainous areas such as the Cascade and Northern Rocky Mountains is limited because few weather stations in these regions have measured snow fall or snow depth over time. An important consideration in mountainous areas is that topography strongly influences local snow conditions. For example, in the Cascades, annual snowfall averaged 121 in (307 cm) at Mazama, WA (elevation 2,106 ft (642 m)), and 15 in (38 cm) at Omak, WA (elevation 1,299 ft (396 m)) (Western Regional Climate Center 2013). In areas of western Montana that support lynx populations, annual snowfall averaged 90 in (229 cm) in Troy (elevation 1,950 ft (594 m)) and 120 in (305 cm) at Seeley Lake (elevation 4,200 ft (1,280 m)) (Western Regional Climate Center 2013).

Based on the information above, we identify winter conditions that provide and maintain deep, fluffy snow for extended periods in boreal forest landscapes to be a physical or biological feature needed to support and maintain lynx populations over time and which, therefore, are essential to the conservation of the lynx DPS.

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

Denning Habitat

Lynx den sites are found in mature and younger boreal forest stands that have a large amount of cover and downed, large woody debris. The structural components of lynx den sites are common features in managed (logged) and unmanaged (e.g., insect-damaged, wind-throw) stands. Downed trees provide excellent cover for den sites and kittens and often are associated with dense woody stem growth.

In northern Maine, 12 of 26 natal dens occurred in conifer-dominated sapling stands, and 5 dens were found in mature or mixed multistoried forest stands dominated by conifers (Organ *et al.* 2008, p. 1515). Modeling sub-stand characteristics of these 26 dens, the authors determined that 2 variables, tip-up mounds of blown-down trees and visual obscurity at 16 ft (5 m) from the den, were most useful for predicting lynx den-site selection in managed forests (Organ *et al.* 2008, p. 1514). Lynx essentially select dense cover in a cover-rich area for denning, with blowdown, deadfalls, and root wads providing denning habitat. Coarse woody debris alone is not a useful predictor of lynx den-site selection, despite its abundance, and denning habitat is not considered limiting in northern Maine (Organ *et al.* 2008, p. 1516). Den sites in Maine often occur at the interface of two stands of different ages or in dense regenerating conifer stands, suggesting that females select den sites near prey sources to minimize time spent away from kittens while foraging (Vashon *et al.* 2012, p. 16).

In northern Minnesota, structural components of forests such as blowdown and deadfalls appear to be more important than forest cover type in determining lynx denning habitat (Interagency Lynx Biology Team 2013, p. 46). Most den sites in Minnesota are found in blowdown and are associated with small patches of uplands surrounded by low-lying wetland areas (Moen and Burdett 2009, pp. 5, 11). Although lowland conifer cover types appear to provide the forest structure used most often for denning in northern

Minnesota (Moen *et al.* 2008a, p. 1510), other forest cover types are used if they contained recent blowdowns (Moen and Burdett 2009, p. 16). Very dense horizontal cover in the immediate vicinity of the den site also appears to be a determinant (Moen and Burdett 2009, p. 16). Female lynx forage within approximately 1.2–1.8 mi (2–3 km) of den sites when kittens are at the den, and the landscape composition within the foraging radius around a den site contains more lowland conifer, upland conifer, and regenerating forest than do home ranges (Moen *et al.* 2008a, p. 1507). Denning habitat does not appear to be limiting in northern Minnesota (Moen and Burdett 2009, p. 16).

In northwestern Montana, lynx generally den in mature spruce-fir forests among downed logs or root wads of wind-thrown trees in areas with abundant coarse woody debris and dense understories with high horizontal cover in the immediate areas around dens (Squires *et al.* 2004a, Table 3; Squires *et al.* 2008, pp. 1497, 1501–1505). Few dens are located in young regenerating or thinned stands with discontinuous canopies (Squires *et al.* 2008, p. 1497). Many dens have northeasterly aspects and are farther from forest edges than random expectation (Squires *et al.* 2008, p. 1497).

In the North Cascades, Washington, lynx den in mature (older than 250 years) stands with an overstory of Engelmann spruce, subalpine fir, and lodgepole pine with an abundance of downed woody debris (Koehler 1990, p. 847). In that study, all detected den sites occurred on north-northeast aspects (Koehler 1990, p. 847).

Lynx in the population introduced into Colorado den at higher elevations and on steeper slopes compared to general use areas, with den sites tending to have northerly aspects and dense understories of coarse woody debris (Shenk 2008, p. 2).

Den site availability, although not thought to be limiting for lynx populations in the DPS (Moen *et al.* 2008a, p. 1512; Organ *et al.* 2008, pp. 1514, 1516–1517; Squires *et al.* 2008, p. 1505), is an essential component of the boreal forest landscapes that lynx need to satisfy a key life-history process (reproduction). Therefore, based on the information above, we identify denning habitat to be a physical or biological feature needed to support and maintain lynx populations over time and which, therefore, is essential to the conservation of the lynx DPS.

Habitats Protected From Disturbance or Representative of the Historic Geographical and Ecological Distributions of the Species

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). In 2014, the IPCC released its Fifth Assessment Report, which represents the current scientific consensus on global and regional climate change and the best scientific data available in this rapidly changing field. The Fifth Assessment Report largely reaffirms the conclusions of previous reports that the global climate is warming at an accelerating rate and that this warming is largely the result of human activities and the associated release of carbon dioxide and other greenhouse gases into the atmosphere (IPCC 2014a, entire).

''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007a, pp. 8–14, 18–19). In our analyses, we weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

The IPCC's Fifth Assessment Report concludes that the strongest and most comprehensive evidence of the impacts of climate change is in natural systems, where many species have responded by shifting their geographic ranges, seasonal activities, migration patterns, abundances, and species interactions (IPCC 2014a, p. 4). The report also concludes that projected climate change during and beyond the 21st Century will increase extinction risk for many terrestrial and freshwater species (IPCC 2014a, pp. 14–15). In North America, observed impacts attributable to climate change that may affect lynx habitats and distribution include upslope and northward shifts in species distributions across multiple taxa, and increased wildfire activity, fire frequency and duration in boreal and subarctic conifer forests of Canada and the western United States (IPCC 2014a, p. 31).

Previous IPCC assessments concluded that temperatures across the globe have increased by about 1.8 °Fahrenheit (F) (1 °Celsius (C)) over the last century (IPCC 2001, p. 7). The IPCC projection for eastern and western North America within the range of the lynx DPS is climate warming of 1.8 °F (1 °C) to 5.4 °F (3 °C) by the year 2050 (IPCC 2007b, p. 889). The range of warming projected over the next century runs from 3.6 °F (2 °C) to 10.8 °F (6 °C) for North America, with warming higher than this average in areas that are inland, northerly, or mountainous. The IPCC concludes that continued warming in North America, with lower snow accumulation and earlier spring snowmelt, is very likely (IPCC 2007b, p. 887). Climate history and projections from regional climate models for regions within the lynx DPS corroborate global models indicating that both eastern and western North America, including all portions of the lynx DPS, have warmed in the last century and are likely to warm 1.8 °F (1 °C) to 5.4 °F (3 °C) by the year 2050 (IPCC 2007b, p. 889). For example, in the Northern Rocky Mountains at Glacier National Park, mean summer temperatures have increased 3.0 °F (1.66 °C) between 1910 and 1980 (Hall and Fagre 2003, pp. 134–137) resulting in lower snowpack, earlier spring melt, and distributional shifts in vegetation (Hall and Fagre 2003, pp. 138–139; Fagre 2005, pp. 4–9). These changes are predicted to continue and accelerate under future climate scenarios (Hall and Fagre 2003, Fig. 7). An analysis of potential snow cover under a range of IPCC future climate scenarios and modeling of vegetation using a dynamic vegetation model indicates that potential lynx habitat could decrease by as much as two-thirds in the contiguous United States by the end of this century (Gonzalez *et al.* 2007, pp. 4, 7–8, 10, 13–14).

Across their worldwide distribution, lynx are dependent on deep snow that persists for long periods of time. Warmer winter temperatures are reducing snow pack in all portions of the lynx DPS through a combination of a higher proportion of precipitation falling as rain and higher rates of snowmelt during winter (Hamlet and Lettenmaier 1999, p. 1609; Brown 2000, p. 2347; Hoving 2001, pp. 73–75; Mote

2003, p. 3–1; Christensen *et al.* 2004, p. 347; Knowles *et al.* 2006, pp. 4548–4549). This trend is expected to continue with future warming (Hamlet and Lettenmaier 1999, p. 1611; Christensen *et al.* 2004, p. 347; Mote *et al.* 2005, p. 48; IPCC 2007b, p. 850). The IPCC (2007b, p. 850) concludes that ''snow season length and snow depth are very likely to decrease in most of North America except in the northernmost part of Canada where maximum snow depth is likely to increase.'' Shifts in the timing of the initiation of spring runoff toward earlier dates in western North America are also well documented (Hamlet and Lettenmaier 1999, p. 1609; Brown 2000, p. 2347; Cayan *et al.* 2001, pp. 409–410; Christensen *et al.* 2004, p. 347; Mote *et al.* 2005, p. 41; Knowles *et al.* 2006, p. 4554). In addition, a feedback effect causes the loss of snow cover due to the reflective nature of snow and the relative heat-absorbing properties of non-snow-covered ground. This feedback effect leads to the highest magnitude of warming occurring at the interface of snow-covered and exposed areas, increasing the rate at which melting occurs in spring (Groisman *et al.* 1994a, pp. 1637–1648; Groisman *et al.* 1994b, pp. 198–200). This effect has led to the average date of peak snowmelt to shift 3 weeks earlier in spring in the Intermountain West (Fagre 2005, p. 4).

Snow accumulation and duration are expected to decline generally in the geographic areas that contain the central and eastern portion of the lynx DPS (IPCC 2007c, p. 891; Burns *et al.* 2009, p. 31). Due to the importance to lynx of prolonged periods of deep fluffy snow, current habitats that lose this feature would decline in value for lynx (Hoving 2001, p. 73; Carroll 2007, p. 1092; Gonzalez *et al.* 2007, entire). Reduced snow depth and duration may reduce lynx's competitive advantage over bobcats, which have similar ecology to lynx but are not as well-adapted to hunting hares in deep fluffy snow (Hoving 2001, pp. 23–24; Carroll 2007, p. 1102; Interagency Lynx Biology Team 2013, pp. 69, 71).

Changes in temperature and rainfall patterns are expected to shift the distribution of ecosystems northward and up mountain slopes (McDonald and Brown 1992, pp. 411–412; Danby and Hik 2007, pp. 358–359; IPCC 2007c, pp. 230, 232). As climate changes over a landscape, the ecosystems that support lynx are likely to shift, tracking the change of temperature, but with a time lag depending on the ability of individual plant and animal species to migrate (McDonald and Brown 1992, pp. 413–414; Hall and Fagre 2003, p. 138; Peterson 2003, p. 652). In the contiguous United States, researchers expect that lynx in mountainous habitat will, to some extent, track climate changes by using higher elevations on mountain slopes, assuming that vegetation communities supportive of lynx and hare habitats also move upslope (Gonzalez *et al.* 2007, p. 7).

Future of Lynx Habitat

In 2003, we determined that climate change was not a threat to lynx within the contiguous United States DPS because the best available science we had at that time (Hoving 2001) was too uncertain in nature (68 FR 40083). Since that time, new information on regional climate changes and potential effects to lynx habitat has been developed (e.g., Knowles *et al.* 2006, pp. 4545–4559; Carroll 2007, pp. 1098–1102; Danby and Hik 2007, pp. 358–359; Gonzalez *et al.* 2007, entire; Iverson *et al.* 2008, pp. 390–400; Beckage *et al.* 2008, entire; Burns *et al.* 2009, p. 31; Johnston *et al.* 2012, pp. 6–13), and much of this new information suggests that climate change is likely to be a significant issue of concern for the future conservation of the lynx DPS. These studies predict lynx and hare habitats—boreal spruce-fir and subalpine forests—and, therefore, lynx distribution, are likely to shift upward in elevation within its currently occupied range and recede northward as temperatures increase (Gonzalez *et al.* 2007, pp. 7, 13–14, 19; Beckage *et al.* 2008, entire; Jacobson *et al.* 2009, pp. 26–27, 30–31; Vashon *et al.* 2012, pp. 60, 64; Interagency Lynx Biology Team 2013, p. 69). The boreal spruce-fir forests that provide habitat for lynx and snowshoe hares is thought to be limited by summer temperatures and drought (Iverson and Prasad 2001, pp. 192–196) and, under a suite of emissions and climate change scenarios, is projected to diminish dramatically or disappear from much of the eastern United States (Iverson and Prasad 2001, p. 196; Iverson *et al.* 2008, pp. 390–400).

Climate modeling suggests that lynx habitat and populations are anticipated to decline accordingly (Carroll 2007, pp. 1098–1102) and may disappear completely from parts of the range of the DPS by the end of this century (Johnston *et al.* 2012, pp. 6–13). Climate change is expected to substantially reduce the amount and quality of lynx habitat in the contiguous United States, with patches of high-quality boreal and subalpine forest habitat becoming smaller, more fragmented, and more isolated (Carroll 2007, pp. 1099–1100; Johnston *et al.* 2012, p. 11). Remaining lynx populations would likely be smaller than at present and, because of small population size and increased isolation, populations would likely be more vulnerable to stochastic environmental and demographic events (Carroll 2007, pp. 1100–1103).

Aside from predicted elevational and latitudinal shifts in areas currently occupied by lynx, we are aware of no models that predict specific areas not currently of value for lynx that will become so as a result of climate-induced changes (e.g., Johnston *et al.* 2012, p. 11). Therefore, at this time, we find it appropriate to designate critical habitat for the lynx only in areas occupied by the DPS that currently contain the physical and biological features essential to the conservation of the lynx. Although it is not within our authority to designate critical habitat in Canada (in the event that the range of lynx recedes northward out of the contiguous United States), the revised critical habitat units in this final rule include, to the extent practicable and reasonable based on habitat potential, higher elevation habitats within the range of the DPS that would facilitate long-term lynx adaptation to an elevational shift in habitat should one occur. As climate change scenarios and ecosystem responses become more regionally certain, revisions to critical habitat may be necessary to accommodate shifts in the range of the essential physical and biological features and any corresponding shift in the range of lynx in the contiguous United States.

Primary Constituent Elements for Canada Lynx

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of lynx in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). 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, as we did in the 2009 final critical habitat rule and in the 2013 proposed rule, that the PCE specific to lynx in the contiguous United States is:

(1) Boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

(a) Presence of snowshoe hares and their preferred habitat conditions, which include dense understories of

young trees, shrubs or overhanging boughs that protrude above the snow, and mature multistoried stands with conifer boughs touching the snow surface;

(b) Winter conditions that provide and maintain deep fluffy snow for extended periods of time;

(c) Sites for denning that have abundant coarse woody debris, such as downed trees and root wads; and

(d) Matrix habitat (e.g., hardwood forest, dry forest, non-forest, or other habitat types that do not support snowshoe hares) that occurs between patches of boreal forest in close juxtaposition (at the scale of a lynx home range) such that lynx are likely to travel through such habitat while accessing patches of boreal forest within a home range.

With this final designation of critical habitat, we have identified the physical or biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the features' PCE sufficient to conserve the species. For lynx, the distinction between areas that may contain *some* of each of the physical and biological features described above and areas that have *all* of the physical and biological features, each in adequate quantities *and* spatial arrangements to support populations (i.e., contains the PCE), is very important for the reasons discussed below.

Many places in the contiguous United States have (1) some amount of boreal forest supporting a mosaic of successional stages, (a) snowshoe hares and their habitats, (b) deep, fluffy snow for extended periods, (c) denning habitat, and (d) other habitat types interspersed among boreal forest patches, but which do not and cannot support lynx populations. That is, not all boreal forest landscapes supporting a mosaic of differing successional forest stages contain the physical and biological features essential to lynx in adequate quantities and spatial arrangements on the landscape to support lynx populations over time. Lynx may occasionally (even regularly, if intermittently) occur temporarily in places that do not contain all of the elements of the PCE, especially during ''irruptions'' of lynx into the northern contiguous United States following hare population crashes in Canada (as described in the proposed rule (78 FR 59433–59436) and below under *Criteria Used To Identify Critical Habitat*). Other areas may contain all the essential physical and biological features but in quantities and spatial arrangements that are inadequate to support lynx over time. For example, although evidence of lynx reproduction confirms the presence of the essential physical and biological features, short-term, sporadic, or inconsistent reproduction that is inadequate to maintain a population over time (i.e., where reproduction and recruitment are too low to consistently offset mortality and emigration over the long term) suggests that the quantity or spatial arrangement (or both) of one or more of the essential features is inadequate. These areas do not contain the PCE, are likely population ''sinks,'' and as such do not contribute to lynx conservation or recovery.

Special Management Considerations or Protection

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.

In listing the lynx as threatened under the Act due to the inadequacy of existing regulatory mechanisms to ensure the conservation of the DPS, the Service recognized the need for special management considerations or protection for lynx in the contiguous United States. The need for specific management direction and conservation measures for lynx was likewise recognized during development of the interagency Lynx Conservation Assessment and Strategy (LCAS; Ruediger *et al.* 2000, entire). The U.S. Forest Service (USFS), Bureau of Land Management (BLM), National Park Service, and the Service developed the LCAS using the best available science at the time specifically to provide a consistent and effective approach to conserve lynx and lynx habitat on Federal lands. The overall goals of the 2000 LCAS were to recommend lynx conservation measures, to provide a basis for reviewing the adequacy of USFS and BLM land and resource management plans with regard to lynx conservation, and to facilitate conferencing and consultation under section 7 of the Act. The LCAS identified an inclusive list of 17 potential risk factors for lynx or lynx habitat that could be addressed under programs, practices, and activities within the authority and jurisdiction of Federal land management agencies. The risks identified in the LCAS were based on effects to individual lynx, lynx populations, or to lynx habitat.

With the listing of the lynx DPS in 2000, Federal agencies across the contiguous United States range of the lynx consulted with the Service on actions that may affect lynx. The LCAS assisted Federal agencies in planning activities and projects in ways that benefit lynx or avoid adverse impacts to lynx or lynx habitat. In most cases, if projects were designed that failed to meet the standards in the LCAS, the biologists using the LCAS would arrive at an adverse effect determination for lynx. The 2000 LCAS used the best information available at the time to ensure that the appropriate mosaic of habitat would be provided for lynx conservation on Federal lands. Although the LCAS was written specifically for Federal lands, many of the conservation measures were considered equally applicable to non-Federal lands.

Lynx conservation depends on management that supports boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding lynx populations over time. At the time it was written, the LCAS recommended the most appropriate level of management or protection for lynx. The LCAS conservation measures addressed risk factors affecting lynx habitat and lynx productivity and were designed to be implemented at the scale necessary to conserve lynx. This level of management is appropriate for Federal lands because they account for the majority of lynx habitat in the contiguous United States (except in Maine), and also because the inadequacy of regulatory mechanisms to conserve lynx on these lands was the primary reason we listed the lynx as threatened under the Act in 2000.

After the LCAS was written, research on lynx, hares, and their habitats and distributions continued throughout the range of the DPS. The Service and land management agencies recognized that, as new scientific information became available, it should supplement the LCAS and be taken into account by land managers. The USFS considered such new information when it proposed to revise Forest Plans under the Northern (U.S. Forest Service 2007, entire) and Southern (U.S. Forest Service 2008b, entire) Rocky Mountains Lynx Amendments. Some of the LCAS standards were changed to guidelines because the Service determined that some risk factors were not negatively affecting the lynx DPS as a whole. For example, after publication of the LCAS, lynx in the contiguous United States were shown to use a variety of sites and conditions for denning, and den site availability is not believed to be a limiting factor for lynx in the DPS (U.S.

Fish and Wildlife Service 2007, pp. 48–49; Interagency Lynx Biology Team 2013, p. 30). Similarly, after evaluating Bunnell *et al.* (2006, entire) and Kolbe *et al.* (2007, entire), the Service determined that the best information available did not indicate that compacted snow routes increased competition from other species to levels that adversely impact lynx populations in the Northern Rocky Mountain Lynx Amendment (NRLA) area (U.S. Fish and Wildlife Service 2007, pp. 53–55). Also since the LCAS was written, new information revealed the importance of multistoried stands for lynx in western areas (Squires *et al.* 2006a, p. 15); based on this, the USFS adopted a standard in the NRLA not identified in the LCAS for conserving such stands.

Federal agencies across most of the range of the DPS have amended or revised land management plans to include specific management direction to conserve lynx and lynx habitat (Interagency Lynx Biology Team 2013, p. 88). This direction was developed in accordance with the National Forest Management Act of 1976 and the regulations that implement the statute (36 CFR 219.22), which requires public review and comment as part of the decisionmaking process. The USFS has completed such amendments or revisions to Land and Resource Management Plans in its Eastern, Northern, Rocky Mountain, and Intermountain regions. In the Pacific Northwest Region, forest plans for national forests with lynx habitat are currently being revised (Interagency Lynx Biology Team 2013, p. 4).

To address the substantial volume of new information on lynx, hares, and their habitats and distributions that has accumulated from more than a decade of continuing research throughout the range of the DPS, the LCAS was revised in 2013 (Interagency Lynx Biology Team 2013, entire). The current revision synthesizes all the available research relevant to lynx, their primary prey, and anthropogenic influences on the conservation of lynx in the contiguous United States. Most USFS Land and Resource Management Plans within the current range of lynx have been formally amended or revised to incorporate lynx and hare conservation standards and guidelines. Standards and guidelines were primarily based on those in the 2000 LCAS, but many Forests used the LCAS to develop goals, objectives, and standards and guidelines formulated or adapted for specific geographic areas or Forest units. Therefore, the Lynx Biology Team deemed it appropriate to abandon the use of prescriptive measures such as those in the 2000 LCAS because they are no longer necessary. Thus, the 2013 revision provides recommended conservation measures to be considered in project planning and implementation and which may help inform future amendments or revisions of USFS forest plans.

The 2013 LCAS revision presents the most current source of such information and will continue to inform the special management considerations necessary for conserving lynx on Federal lands. Notably, the 2013 revision concludes that recent studies in the contiguous United States generally suggest that lynx are rarer and more patchily distributed in the west and in the Great Lakes region, and more abundant in Maine, than previously thought (Interagency Lynx Biology Team 2013, p. 23). It recommends focusing limited conservation resources on those ‘‘. . . relatively limited areas that support persistent lynx populations and have evidence of recent reproduction, with less stringent protection and greater flexibility given in areas that only support lynx intermittently’’ (Interagency Lynx Biology Team 2013, p. 2).

The LCAS was developed to provide a consistent and effective approach to conserve lynx on Federal lands in the conterminous United States. In northern New England, the only place the LCAS would apply is on Federal land in the White Mountain National Forest. However, in northern New England, most lynx habitat is on private commercial timber lands, and lynx populations there occur in extensive boreal forest landscapes where large, contiguous stands of young, regenerating spruce-fir habitat are prevalent (due to past clear-cut timber harvest) and support high densities of snowshoe hares. Although lynx and hare habitats were likely created historically by natural forest disturbances (e.g., fire, insects and disease, and windthrow), the current extensive habitats in northern Maine are the result of large-scale industrial forest management. Maintaining lynx populations there will require forest management practices that produce extensive stands supporting high hare densities into the future. The Service developed Canada Lynx Habitat Management Guidelines for Maine (McCollough 2007, entire), which specify the special management—recommendations on land use, forest conditions, landscape conditions, and silviculture requirements—needed to support lynx populations based on the best available science (see discussion of Healthy Forest Reserve Program under Exclusions, below, for further details).

Four northern Maine landowners with collective ownership of approximately 8.5 percent of occupied lynx habitat have developed lynx forest management plans through the Natural Resource Conservation Service's Healthy Forest Reserve Program. These landowners commit to employ the Service's lynx habitat management guidelines (McCollough 2007, entire), which include greater use of even-aged silviculture that creates large patches of high-quality hare habitat and landscape hare densities that will continue to support lynx. All other private lands occupied by lynx in Maine currently lack specific forest management plans for lynx, indicating a continuing need for special management considerations there.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If, after identifying currently occupied areas, we determine 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 additional areas—outside those occupied at the time of listing—are essential for the conservation of the species (i.e., whether the species can only be conserved and recovered via the designation of additional areas). In this final rule, we are designating critical habitat only in areas within the geographical area occupied by the species at the time of listing in 2000 because we have determined that these areas are sufficient for the conservation of the lynx DPS and that designating areas that were not occupied at the time of listing would not address or ameliorate the threat for which the DPS was listed (the inadequacy, at the time of listing, of existing regulatory mechanisms). Because designating areas not occupied at the time of listing would not address the threat for which the lynx DPS was listed, doing so would not improve the likelihood of recovery (the point at which the protections of the Act are no longer necessary and delisting the DPS would be appropriate). Therefore, we have

determined that areas outside those occupied at the time of listing are not essential to the conservation and recovery of the lynx DPS (i.e., we do not find that the DPS could only be conserved and recovered if we were to designate areas not occupied at the time of listing).

To determine those specific areas occupied by the species at the time it was listed on which are found those physical or biological features essential to the conservation of the species, as required by section 3(5)(a)(i) of the Act, we reviewed the approach to the conservation of the lynx provided in the LCAS (Ruediger *et al.* 2000, entire; Interagency Lynx Biology Team 2013, entire); the recovery outline (U.S. Fish and Wildlife Service 2005, entire); information from State, Federal and Tribal agencies; and information from academia and private organizations that have collected scientific data on lynx. We reviewed available information that pertains to the habitat requirements of lynx and its principal prey, the snowshoe hare. This information included data in reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act; research published in peer-reviewed articles or presented in academic theses; agency reports and unpublished data; and various Geographic Information System (GIS) coverages (e.g., land-cover type information, land ownership information, snow depth information, topographic information, locations of lynx obtained from radio- or GPS-collars and locations of lynx confirmed via DNA analysis or other verified records).

In designating critical habitat for the lynx, we used the best scientific data available to identify areas that possess appropriate quantities and spatial arrangements of the physical and biological features essential to the conservation of the DPS and that may require special management considerations or protection. In identifying areas as critical habitat, we first conducted a two-part analysis: (1) We relied on information used during listing of the species, and any available newer information, to delineate the geographic area occupied by the species at the time of listing, and (2) we used the best available scientific information to determine which occupied areas contain the physical and biological features in adequate quantities and spatial arrangements to support lynx populations over time, thus demonstrating that they are essential to the conservation of the lynx.

To delineate critical habitat for lynx, we must be able to distinguish across the extensive range of the species in the contiguous United States, areas that contain all essential physical and biological features in adequate quantity and spatial arrangement to support lynx populations over time (areas with the PCE, as described above under ''Primary Constituent Element for Canada Lynx'') from other areas that may contain some or all of the features but in inadequate quantities and/or spatial arrangements of one or more feature (and which, therefore, by definition do not contain the PCE). However, the scientific literature does not confer precisely what quantities and spatial arrangements of the physical and biological features are needed to support lynx populations throughout the range of the DPS. We lack range-wide site-specific information or tools that would allow us to analyze boreal forests across much of the range of the DPS and determine which specific areas contain the spatial and temporal mosaic of habitats and hare densities that lynx populations need to persist.

Delineating critical habitat for lynx is complicated by a number of factors related to (1) the animals' biology and population dynamics; (2) the biology and population dynamics of its primary prey, the snowshoe hare; (3) the patchily distributed, temporally and spatially dynamic successional habitat features that shift continually across landscapes, and which drive populations of both lynx and hares at the southern peripheries of both species' ranges; (4) our imperfect understanding of the above factors; and (5) the resulting difficulty in determining with certainty and quantifying which specific habitat features, in what specific amounts and spatial and temporal arrangements, are necessary to provide the boreal forest mosaic essential to lynx conservation. The task is further complicated by an imperfect historical record of lynx occurrence in the contiguous United States. Finally (but importantly), the differences between areas capable of supporting lynx populations over time and other areas that look like they should, but do not, are often subtle and cannot be distinguished over broad areas using traditional vegetation/habitat mapping, remote sensing (aerial photos, satellite data), or available habitat modeling techniques (e.g., see Ivan 2011a, p. 27).

As described in the *Distribution* and *Biology* sections of the proposed rule (78 FR 59433–59436), lynx populations throughout most of their range are irruptive. In central Canada where they inhabit a large, relatively homogenous boreal forest landscape, lynx respond quickly to cyclic fluctuations in hare populations. When hares are abundant, lynx respond with increased productivity and survival and, therefore, increased population sizes (Slough and Mowat 1996, pp. 955–956; Mowat *et al.* 2000, pp. 266, 272). Typically, after hare numbers peak, they begin to decline rapidly and dramatically, forcing large numbers of lynx to disperse—to abandon home ranges in areas with dwindling prey bases no longer capable of supporting the large number of lynx that resulted from the earlier prey abundance (Slough and Mowat 1996, pp. 956–957; Mowat *et al.* 2000, pp. 291–294). These periodic mass dispersal events (irruptions) appear to start at the core of the species' range in Canada and radiate outward (McKelvey *et al.* 2000a, p. 239). At the southern periphery of the lynx's range, these events sometimes result in large numbers of lynx dispersing into a variety of habitats in some areas of the northern contiguous United States in search of adequate food resources (Thiel 1987, entire; McKelvey *et al.* 2000a, pp. 239–242). Some of these dispersing lynx survive and reestablish home ranges elsewhere, but many die en route, often soon after initiating dispersal (Mowat *et al.* 2000, p. 293), and some appear to remain temporarily in areas not capable of supporting all of their life-history needs over time (Thiel 1987, entire).

Canadian populations of lynx have historically been the most reliable source for lynx populations in many areas of the contiguous United States, tending to replenish them within the DPS about every 10 years as the lynx/hare cycle ebbs and flows (McKelvey *et al.* 2000a, entire). These events can be pictured as a ''wave'' of lynx that occasionally washes over many of the northern tier of States. Over time the wave recedes, leaving remnant lynx populations or ''puddles'' of lynx in a variety of habitats. These puddles of lynx shrink over time as many lynx perish in inhospitable habitats or disperse elsewhere in search of adequate hare densities. When these waves recede, lynx may disappear abruptly from areas of unsuitable habitat or more gradually from suboptimal or marginal habitats.

In both cases, lynx perish in or leave many of the places where they occurred temporarily because the habitats in such places, due to insufficient prey densities or inadequacy of one or more other physical or biological features, are incapable of supporting them over time. In a few places in the northern contiguous United States, in landscapes with relatively high snowshoe hare densities and adequate quantities and spatial arrangements of other essential physical and biological features, the

puddles tend to persist. It is these remnant ''puddle'' areas that demonstrate the capacity to support lynx population resiliency—the ability of lynx to persist through lows in their own populations and those of their primary prey—that we have determined are essential to conservation of the contiguous United States lynx DPS.

In terms of lynx conservation, it is important to distinguish between areas that support lynx populations over time (the lasting ''puddles'') and areas in which lynx may occasionally and temporarily (even if somewhat regularly) occur during and for some time after population irruptions (the temporary or shrinking ''puddles''). The former are likely ''source'' subpopulations within the lynx metapopulation. In addition to their ability to persist through lows in hare and lynx numbers, those areas, during times of hare abundance, produce excess lynx that may either subsequently bolster the local population or disperse into adjacent areas, should habitats and hare numbers in those areas become favorable. The latter areas are likely ''sinks''—places where lynx may occasionally occur temporarily but where reproduction and recruitment, if any occur at all, are unlikely to offset mortality. Such areas do not support lynx over time or produce excess lynx and, therefore, do not contribute to the health and stability of the metapopulation.

Lynx are wide-ranging animals that regularly make long-distance movements through both suitable and unsuitable habitats. They also are habitat and prey specialists, inferring natural selection pressures favoring the ability to identify, locate, and occupy habitats conducive to survival and reproduction. The historic record shows that lynx occurred only occasionally in some parts of the southern periphery of its range in the contiguous United States during and for variable lag times after the wave-like population irruptions described above, with long periods of apparently complete absence between irruptions (McKelvey *et al.* 2000a, entire). This finding suggests that lynx dispersing from areas where hare numbers were declining arrived at many such places looking for but not finding the physical and biological features they needed to survive over the long term (Mowat *et al.* 2000, p. 293). Additionally, lynx were listed under the Act because regulatory mechanisms at the time were deemed inadequate to conserve lynx habitats in the places they did occur, not because of any documented population decline, range contraction, or large-scale habitat loss in the contiguous United States (65 FR 16052, 68 FR 40076). For the reasons given above, we conclude it is unlikely that there are areas within the DPS range that contain the PCE (i.e., adequate quantity and spatial arrangement of all essential physical and biological features) that lynx have been unable to locate and occupy. Based on surveys both within and outside of designated critical habitat and in many of the secondary areas defined in the recovery outline, and on responses from peer reviewers and discussions with other lynx researchers, we also conclude that it is very unlikely that there are other resident lynx populations within the range of the DPS that have remained undetected.

Finally, the Act indicates that the function of critical habitat is to provide for the recovery of the species. We designate critical habitat in areas that contain, based on our assessment of the best data available to us, the physical and biological features in the appropriate quantities and spatial arrangements (the PCE), to provide for the conservation of the species. For some species, critical habitat may include unoccupied areas if the currently occupied areas are not sufficient to recover the species. For other species, critical habitat may be a subset of the occupied areas, if the occupied areas have differences in quality that relate to their ability to contribute meaningfully to recovery of the species. The Act does not require that we designate critical habitat in every area that has some components or some amount of the PCE, nor does it require that we demonstrate that all other areas lack the PCE. We make these determinations on a case-by-case basis based upon the best information available as to what the species needs for recovery.

By specifically allowing revisions to critical habitat designations if and when new information becomes available, the Act recognizes the potential limitations of the best available information at any point in time. For lynx, we have determined that not all areas where lynx occasionally occur are necessary for recovery. We believe that lynx recovery in the contiguous United States can be accomplished by conserving high-quality habitat occupied by naturally resident lynx populations across the range of the DPS, and addressing the threats to lynx in those areas.

In summary, lynx have a demonstrated ability to disperse large distances in search of favorable habitats. Further, natural selection theory implies the ability of lynx to locate and occupy areas conducive to their survival and population viability. Nonetheless, due to inherent swings in densities of their primary prey, lynx regularly occur temporarily in habitats that are not capable of supporting populations over time, usually during irruptions after cyclic hare population crashes in Canada. In designating critical habitat for lynx, it is essential to distinguish between areas capable of supporting populations over time (areas with all essential physical and biological features in adequate quantities and spatial arrangements and which, therefore, demonstrably contain the PCE) and areas that may have some or all of the features but with inadequate quantities and/or spatial arrangements of one or more of them (and which, therefore, do not contain the PCE). Exactly how much of each of the physical and biological features must be present and specifically how each must be spatially arranged within boreal forest landscapes to support lynx populations over time is unknown.

In the absence of site-specific information, we do not have tools or techniques (e.g., remote sensing or vegetation mapping technologies of adequate resolution) that would allow us to distinguish across broad landscapes throughout all of the range of the DPS between those areas that contain the PCE and other areas that contain the physical and biological features but in inadequate quantity and/or spatial arrangement. Nonetheless, we use the best available information to identify where the physical and biological features occur in adequate quantity and spatial arrangement to provide for the conservation of the species. Within this context, we developed the strategy described below for identifying, delineating, and designating critical habitat for the contiguous United States DPS of the Canada lynx.

The focus of our strategy in considering lands for designation as critical habitat is on boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding lynx populations over time. These factors are included in the PCE for lynx. As defined in the recovery outline, areas that meet these criteria and have recent evidence of reproduction are considered ''core areas'' for lynx (U.S. Fish and Wildlife Service 2005, pp. 3–4). However, we do not consider reproduction as a proxy for the PCE in this final rule.

In determining the geographic area occupied by the species at the time of listing, we used data providing verified

evidence of lynx occurrence. We eliminated areas from consideration in two ways: (1) areas outside the known historical range and (2) data older than 1995 were not considered valid to our assessment of areas occupied by lynx populations at the time of listing. We used data on the known historical range of the lynx (e.g., McKelvey *et al.* 2000a, pp. 207–232; Hoving *et al.* 2003, entire) to eliminate areas outside the historical range of the species.

We then focused on records since 1995 to ensure that this critical habitat designation is based on the data that most closely represent the current status of lynx in the contiguous United States and the geographical area known to be occupied by the species at the time of listing. Although the average lifespan of a wild lynx is not known, we assumed that a lynx born in 1995 could have been alive in 2000 or 2003, when the final listing rule and the clarification of findings were published. Data after 1995 were considered a valid indicator of occupancy at the time of listing. Recent verified lynx occurrence records were provided by Federal research entities, State wildlife agencies, academic researchers, Tribes, and private individuals or organizations.

We used only verified lynx records, because we wanted to rely on the best available data to evaluate specific areas and their features for critical habitat designation. The reliability of lynx occurrence reports can be questionable because the bobcat, a common species in much of the range of the lynx DPS, can easily be confused with the lynx. Additionally, many surveys are conducted by snow tracking in which correct identification of tracks can be difficult because of variable conditions affecting the quality of the track and variable expertise of the tracker. Our definition of a verified lynx record is based on McKelvey *et al.* (2000a, p. 209): (1) an animal (live or dead) in hand or observed closely by a person knowledgeable in lynx identification, (2) genetic (DNA) confirmation, (3) snow tracks only when confirmed by genetic analysis (e.g., McKelvey *et al.* 2006, entire), or (4) location data from radio or GPS-collared lynx. Documentation of lynx reproduction consists of lynx kittens in hand, or observed with the mother by someone knowledgeable in lynx identification, or snow tracks demonstrating family groups traveling together, as identified by a person highly knowledgeable in identification of carnivore tracks. However, we made an exception and accepted snow track data from Maine, New Hampshire, and Vermont because of the stringent protocols, the confirmation of lynx tracks by trained, highly qualified biologists, and the absence of species in the area with tracks that could be easily misidentified as lynx (Maine Dept. of Inland Fisheries and Wildlife 2003, entire).

To define critical habitat according to section 3(5)(A) of the Act, we then delineated, within the geographical area occupied by the species at the time of listing, areas containing physical and biological features essential to the conservation of the lynx. The adequacy of the quantities and spatial arrangements of the physical and biological features (as defined above) essential to the conservation of the DPS is informed by the recovery outline for the species (as discussed below), the nature of the threats in a particular geographic area, and the conservation needs for the species in a particular geographic area.

In the North Cascades and Northern Rockies, the features essential to the conservation of lynx, the majority of lynx records, and the boreal forest types are typically, though not always, found above 4,000 ft (1,219 m) in elevation (McKelvey *et al.* 2000b, pp. 243–245; McAllister *et al.* 2000, entire). Thus, we limited the delineation of critical habitat to lands above this elevation unless we had habitat data indicating that high-quality habitat exists below this elevation. Additionally, in the North Cascades, features essential to the conservation of the lynx and the majority of the lynx records occur east of the crest of the Cascade Mountains.

Application of the Criteria to the Southern Rocky Mountains and Certain National Forests in Idaho and Montana

As described above under Previous Federal Actions, the District Court for the District of Montana found several flaws with our 2009 critical habitat designation for lynx. The following section discusses the issues raised by the court.

Colorado and the Southern Rocky Mountains

The Montana District Court found, among other things, that we failed in our 2009 designation to determine whether ''areas occupied by lynx in Colorado possess the physical and biological features essential to the conservation of the species.''

In the recovery outline, we defined six core areas for lynx as those having *both* persistent verified records of lynx occurrence over time *and* recent evidence of reproduction (U.S. Fish and Wildlife Service 2005, pp. 3–5, 20–21). We also defined the Southern Rocky Mountains of Colorado and southern Wyoming (which both lack persistent verified records of lynx occurrence over time) as a ''provisional'' core area because it contained an introduced lynx population that had demonstrated reproduction (U.S. Fish and Wildlife Service 2005, p. 4). ''Provisional'' means: ''accepted or adopted tentatively; conditional; or temporary.'' In our 2009 critical habitat designation, after careful evaluation of the historic record of verified lynx occurrence in Colorado and the Southern Rockies, we determined that there was no compelling evidence that the area had ever supported lynx populations over time and that, therefore, it did not likely contain the PCE and did not meet our criteria for designating critical habitat (74 FR 8641).

For reasons that are described in more detail below (also see our responses to comments (10), (11), and (23), above), the available data do not support that Colorado and the Southern Rockies contain the physical and biological features essential to lynx in adequate quantity and spatial arrangement to support lynx populations over time, and we provide what evidence is available to determine whether the area, or any parts of it, contain the PCE.

In 1999, just prior to lynx being listed under the Act, the Colorado Division of Wildlife (now Colorado Parks and Wildlife (CPW)) began an intensive effort to establish a lynx population in Colorado, eventually releasing 218 wild-caught Alaskan and Canadian lynx from 1999 to 2006 (Devineau *et al.* 2010, p. 524). At least 122 (56 percent) of the introduced lynx died by June of 2010 (Shenk 2010, pp. 1, 5), but others survived and established home ranges in Colorado, produced kittens in some years, and now are distributed throughout forested areas of western Colorado. Some lynx from this introduced population have also traveled into northern New Mexico, eastern Utah, and southern and western Wyoming, though no reproduction outside of Colorado has been documented by these dispersers.

The CPW has determined the lynx introduction effort to be a success based on attainment of several benchmarks (e.g., high post-release survival, low adult mortality rates, successful reproduction, recruitment equal to or greater than mortality over time; Ivan 2011a, p. 21 and 2011b, p. 11), but acknowledges that the future persistence of the population is uncertain and hinges on the assumption that patterns of annual reproduction and survival observed as of 2010 repeat themselves during the next 20 or more years (Shenk 2008, p. 16; Shenk 2010,

pp. 2, 5–6, 11). However, CPW has discontinued the intensive monitoring necessary to determine if these patterns of reproduction and survival will persist over that time (Colorado Parks and Wildlife 2012, p. 1), instead embarking on a passive monitoring program to detect lynx presence (Ivan 2011c, entire).

Although parts of Colorado and the Southern Rocky Mountains clearly contain some (perhaps all) of the physical and biological features lynx need, available evidence does not indicate that the area, or any parts of it, contain the features in the quantity and spatial arrangement necessary to provide for the conservation of the species. That is, the PCE is the elements of the PBFs in adequate quantity and spatial arrangement on a landscape scale. Some areas may contain some amounts of all the PBFs, but with one or more in inadequate quantity and/or spatial arrangement and, therefore, does not contain the PCE. The Southern Rocky Mountains (western Colorado, northern New Mexico, and southern Wyoming) are on the southern limit of the species' range and contain marginal lynx habitat (74 FR 8619), are disjunct from lynx habitats in the United States and Canada (McKelvey *et al.* 2000a, p. 230; 68 FR 40090; Devineau *et al.* 2010, p. 525; Interagency Lynx Biology Team 2013, pp. 50, 54), and have patchily distributed habitat that limits snowshoe hare abundance (Interagency Lynx Biology team 2013, p. 54). Snowshoe hares and their preferred habitats are described above as part of the PCE. The nearest lynx population occurs in the Greater Yellowstone Area, which supports a small, low-density population also disjunct from other lynx populations and which is unlikely to regularly supply dispersing lynx to the Southern Rockies. We previously determined that the Southern Rockies' distance and isolation from other lynx populations and habitats substantially reduce the potential for lynx from northern populations to naturally augment or colonize the area, that the immigration necessary to maintain a local lynx population is, therefore, naturally precluded, and that the contribution of the Southern Rockies to the persistence of lynx in the contiguous United States is presumably minimal (68 FR 40100–40101).

Dolbeer and Clark (1975, p. 539) estimated 0.30 hares per ac (0.73 hares per ha) on their study area in Summit County in central Colorado. Reed *et al.* (1999, unpublished, as cited by Hodges (2000, p. 185)) reported hare densities in Colorado ranging from 0.02 to 0.19 hares per ac (0.05 to 0.46 hares per ha). In areas used by introduced lynx in west-central Colorado, Zahratka and Shenk (2008, pp. 906, 910) reported hare densities that ranged from 0.03 to 0.5 hares per ac (0.08 to 1.32 hares per ha) in mature Engelmann spruce-subalpine fir stands and from 0.02 to 0.14 hares per ac (0.06 to 0.34 hares per ha) in mature lodgepole pine stands. The authors cautioned against comparing their results to other hare density estimates, as their use of the ''mean maximum distance moved'' method may have underestimated effective area trapped (Zahratka and Shenk 2008, p. 911), potentially resulting in overestimates of hare density.

In ''purportedly good'' hare habitat also in west-central Colorado in the area used by introduced lynx, Ivan (2011b, pp. iv–v, 71, 92) estimated summer hare densities of 0.08 to 0.27 hares per ac (0.2 to 0.66 hares per ha) in stands of ''small'' lodgepole pine, 0.004 to 0.01 hares per ac (0.01 to 0.03 hares per ha) in ''medium'' lodgepole pine, and 0.004 to 0.1 hares per ac (0.01 to 0.26 hares per ha) in spruce-fir stands. The author reported that hare densities were less than 0.4 hares per ac (<1.0 hare per ha) in all stand types and all seasons and, in most cases, were less than 0.12 hares per ac (0.3 hares per ha), and no combination of survival and recruitment estimates from any stand type in any year would result in a self-sustaining hare population, though hare recruitment may have been underestimated (Ivan 2011b, pp. 95, 99).

Ruggiero *et al.* (2000, pp. 446–447) concluded that a snowshoe hare density greater than 0.2 hares per ac (0.5 hares per ha) may be necessary for lynx persistence. Steury and Murray (2004, pp. 127, 137) modeled lynx and hare populations and determined that a hare density of 0.4–0.7 hares per ac (1.1–1.8 hares per ha) would be needed for persistence of lynx translocated (i.e., introduced or reintroduced) to the southern portion of the species' range. Most hare density estimates for Colorado are well below those thought necessary to support an introduced lynx population over time (Steury and Murray 2004, entire), and many, even from areas considered ''good'' hare habitat, are lower than the density Ruggiero *et al.* (2000, pp. 446–447) considered necessary for lynx persistence. The generally low hare densities reported in most cases in what is considered good hare habitat in western Colorado and the very large home ranges (181 mi^2 (470 km^2) for females and 106 mi^2 (273 km^2) for males) reported by Shenk (2008, pp. 1, 10) suggest that even the best potential lynx habitat in the Southern Rocky Mountains is marginal and unlikely to support lynx populations over time.

Some of the lynx introduced into Colorado have dispersed into mountainous areas of northern New Mexico, which contain relatively small and fragmented areas of similar high-elevation spruce/fir and cold mixed-conifer habitats (U.S. Forest Service 2009, pp. 5–10). No evidence exists that lynx occupied these or any other areas of New Mexico historically, and habitats in New Mexico are thought to be incapable of supporting a self-sustaining lynx population (U.S. Forest Service 2009, pp. 2, 10, 16–17). In addition, the lack of connectivity with northern lynx populations (McKelvey *et al.* 2000a, p. 230; Devineau *et al.* 2010, p. 525; Interagency Lynx Biology Team 2013, pp. 50, 54), which is considered necessary for the maintenance and conservation of lynx populations in the contiguous United States (Interagency Lynx Biology Team 2013, pp. 42, 47, 54, 60, 65), further suggests that lynx in the Southern Rockies, in the absence of continued translocations or introductions of lynx, are unlikely to receive the demographic and genetic exchange needed to maintain lynx populations over time.

For these reasons, the Service has determined that the Southern Rocky Mountains likely do not possess the physical and biological features essential to lynx in sufficient quantity and spatial arrangement to sustain lynx populations over time. Therefore, we find that the habitat in Colorado and elsewhere in the Southern Rocky Mountains does not contain the PCE, is not essential for the conservation of the lynx DPS, and we are not designating critical habitat for the lynx DPS in the Southern Rockies.

We acknowledge the efforts by the CPW and recognize that wildlife introductions are, by their nature, experiments whose fates are uncertain. However, it is always our goal for such efforts to be successful and, where possible, contribute to recovery of listed species. If Colorado's introduction effort is successful (i.e., if recruitment equals or exceeds combined mortality and emigration over the next 20 years (Shenk 2010, pp. 2, 5–6, 11)), it could *contribute* to recovery by providing an additional buffer against threats to the DPS. The potential contribution of Colorado to lynx recovery does not mean, however, that the habitat there is essential for the conservation of the DPS. In other words, the lynx population in Colorado is beneficial, but not essential, for recovery.

National Forests in Idaho and Montana

The Montana District Court ordered the Service to determine specifically whether lands in the Clearwater and Nez Perce National Forests in Idaho, the Bitterroot National Forest in Idaho and Montana, the Beaverhead-Deerlodge National Forest in Montana, and additional parts of the Helena and Lolo National Forests (outside the areas currently designated) in Montana contain the physical and biological features essential for the conservation of the DPS. Although each of these areas clearly contain some (and perhaps all) of the physical and biological features lynx need, for the reasons discussed below, we find no evidence that any of the areas contain the elements in adequate quantity and spatial arrangement to provide for the conservation of lynx. We provide evidence, where available, that these areas were likely not occupied by lynx at the time of listing and are not currently occupied by lynx populations, and we summarize relevant survey results, all of which indicate that lynx do not occupy these areas or that the areas are lacking in either quantity or spatial arrangement (or both) of one or more of the essential features. We have determined that these areas do not contain the PCE, are not essential to the conservation of the lynx, and do not meet the definition of critical habitat. Therefore, based on the information summarized below, we have not included these National Forest lands in this final critical habitat designation.

In the recovery outline, the Service classified these areas (outside the portions of the Helena and Lolo National Forests designated as critical habitat) as ''secondary areas'' because they lack evidence of lynx reproduction (U.S. Fish and Wildlife Service 2005, pp. 4, 21). As described in detail below, recent surveys for lynx conducted in accordance with established and accepted protocols in many of these areas have failed to detect lynx presence, and the available evidence suggests these areas occasionally may provide temporary habitat for transient lynx dispersing from established lynx populations in the Northern Rocky Mountains of Canada, Idaho, and Montana, but that they likely do not contain all essential physical and biological features in adequate quantity or spatial arrangement to support lynx populations over time.

There is no evidence that the Beaverhead-Deerlodge, Bitterroot, and Nez Perce National Forests were occupied by lynx at the time of listing, or that they are currently occupied by lynx populations. To date, surveys on these National Forests, which have been conducted according to established protocols, have failed to detect presence of any individual lynx, and they provide no indication of the presence of lynx populations. Surveys described below were conducted according to National Lynx Survey (McKelvey *et al.* 1999b, entire), and winter snow-tracking survey (Squires *et al.* 2004b, entire) protocols. Snow-tracking surveys in particular, when conducted strictly according to appropriate protocols by experienced surveyors, which often results in collection of DNA and genetic verification of species identity, are highly effective at detecting lynx, even when only a few animals inhabit the survey area (Ulizio *et al.* 2007, p. 5; Squires *et al.* 2012, pp. 215, 219–222).

On the Beaverhead-Deerlodge National Forest, National Lynx Survey efforts in 1999–2001 detected no lynx (U.S. Forest Service 2002a, entire and 2002b, entire). During 2001–2005, in surveys designed to detect presence of lynx and wolverines, 11,220 mi (17,950 km) of winter snow-tracking surveys and trap route checks in the Anaconda-Pintler, Beaverhead, Flint Creek and Pioneer mountain ranges on the Beaverhead-Deerlodge National Forest detected only a single ''putative'' lynx track, and no verified tracks (Squires *et al.* 2003, p. 4; Squires *et al.* 2006b, p. 15). Additional recent snow tracking surveys (Berg 2009, entire) also failed to detect any lynx, and the author concluded that, although some pockets of habitat appeared to support high densities of snowshoe hares, ''[m]ost of the [Beaverhead-Deerlodge National Forest] was and appeared to be dry lodgepole pine, which likely is not good lynx habitat . . .'' (Berg 2009, p. 20).

During May and June of 2009, hair snares (642 snare-nights) and remote cameras (319 camera-nights) deployed in the Boulder, Flint Creek, and Pioneer mountain ranges also failed to detect any lynx (Porco 2009, entire). Additional hair snare surveys in summer 2012 similarly failed to detect lynx (Pilgrim and Schwartz 2013, entire; U.S. Forest Service 2013c, entire). Snow-tracking surveys designed to detect presence of multiple forest carnivores, including lynx, conducted by the Idaho Department of Fish and Game from 2004 to 2006 detected no lynx in the Beaverhead Mountains Section, just west of the Beaverhead-Deerlodge National Forest (Patton 2006, pp. 20–21, Table 11). We conclude that the rigorous efforts described above collectively provide strong indication that lynx do not occupy the Beaverhead-Deerlodge National Forest, and that the habitat quality and hare densities appear, based on the best available information, to be inadequate to support lynx. We find no scientific evidence that this area contains the physical and biological features essential to lynx in adequate quantity and spatial arrangement. Therefore, it does not contain the PCE and is not essential for the conservation of the lynx DPS.

On the Bitterroot National Forest, National Lynx Survey efforts in 2000–2002 and 2010–2011 detected no lynx (U.S. Forest Service 2000, entire, 2002c, entire, 2003a, entire, 2003b, entire; Pilgrim 2010, entire; Shortsleeve 2013, pers. comm.). Snow-tracking surveys designed to detect presence of multiple forest carnivores, including lynx, conducted by the Idaho Department of Fish and Game from 2004 to 2006 detected no lynx in the Bitterroot Mountains Section (Patton 2006, pp. 20–21, Table 11). Additionally, among 223 vegetation plots sampled in 2010–2012 on the Forest, only 30 (16.1%) met minimum horizontal cover standards for snowshoe hare/lynx habitat (U.S. Forest Service 2012, unpublished data). Based on the information above, we conclude that lynx do not occupy the Bitterroot National Forest, and that the habitat quality and hare densities appear, based on the best available information, to be inadequate to support lynx. We find no scientific evidence that this area contains the physical and biological features essential to lynx in adequate quantity and spatial arrangement. Therefore, it does not contain the PCE and is not essential for the conservation of the lynx DPS.

On the Nez Perce National Forest, winter snow-tracking surveys covering 448 mi (721 km) in 2007 did not detect any lynx (Ulizio *et al.* 2007, entire). The authors concluded that (1) these surveys very likely would have detected the presence of a lynx population if one occurred on the Forest, (2) that the failure to detect lynx suggests that a lynx population does not inhabit the surveyed portion of the Forest, and (3) ''[h]istorical sightings . . . may be the result of transient lynx moving through the forest, but the infrequency of such reports suggests lynx are incidental to the area'' (Ulizio *et al.* 2007, p. 5). Neither a partial hare-snare survey conducted in 2008 (though at fewer stations than recommended by the protocol) nor a partial snow-tracking survey conducted in 2009 (also less extensive than protocol) detected presence of lynx on the Forest. Snow-tracking surveys conducted according to established protocols and covering 553 mi (890 km) of forest roads were completed in 2013; these surveys also

failed to detect presence of any lynx on the Nez Perce National Forest (U.S. Forest Service 2013d, pp. 3–7). Snow-tracking surveys designed to detect presence of multiple forest carnivores, including lynx, conducted by the Idaho Department of Fish and Game from 2004 to 2006 detected no lynx in the Clearwater Region, including parts of the Nez Perce National Forest (Patton 2006, p. 9, Table 2). Based on the information above, we conclude that lynx do not occupy the Nez Perce National Forest, and that the habitat quality and hare densities appear, based on the best available information, to be inadequate to support lynx. We find no scientific evidence that this area contains the physical and biological features essential to lynx in adequate quantity and spatial arrangement. Therefore, it does not contain the PCE and is not essential for the conservation of the lynx DPS.

The paucity of verified historical records of lynx occurrence in these three National Forests, and the absence of recent verified records, despite numerous surveys designed to detect lynx presence and described in the preceding paragraphs, suggest these areas may rarely and temporarily support transient dispersing lynx (McKelvey *et al.* 2000a, pp. 224–227; Ulizio *et al.* 2007, p. 5). Based on these surveys, historical records of lynx occurrence, the vegetation sampling data described above (U.S. Forest Service 2012, unpublished data), and expert opinion on habitat quality described above (Ulizio *et al.* 2007, p. 5), the Service has determined that habitats on these three National Forests are not occupied by lynx populations and do not contain the essential physical and biological features in appropriate quantity and spatial arrangement to support lynx over time. We have determined that these areas do not contain the PCE, do not meet the definition of critical habitat, and are not essential to the conservation of the lynx DPS. Therefore, we have not included the Bitterroot, Beaverhead-Deerlodge, and Nez Perce National Forests within this final critical habitat designation.

We recognize that all of the Clearwater and Lolo National Forests, and parts of the Helena National Forest (except for the disjunct Big Belt and Elkhorn mountain ranges) are considered ''occupied'' by lynx for purposes of consultations under section 7 of the Act. Occupancy in the context of section 7 consultation is intended to inform the ''may be present'' standard under section 7 and does not imply the presence of lynx populations or that the habitats in these areas contain the physical and biological features necessary to support a lynx population over time. For section 7 purposes, occupancy is determined on a Forest-wide basis, so that two observations anywhere on a Forest confer permanent ''occupied'' status to the entire Forest, even in places where lynx have not been documented and where no lynx populations occur.

The Clearwater National Forest is in an area classified in the recovery outline as a secondary area for lynx recovery (U.S. Fish and Wildlife Service 2005, p. 21) because there is no record of consistent lynx presence on the Forest. Snow-tracking surveys designed to detect presence of multiple forest carnivores, including lynx, conducted by the Idaho Department of Fish and Game from 2004 to 2006 detected no lynx in the Clearwater Region, including parts of the Clearwater National Forest (Patton 2006, p. 9, Table 2). Wirsing *et al.* (2002, entire) studied snowshoe hare demographics on study areas within the Clearwater National Forest. They concluded that hare habitat was fragmented; good hare habitat was rare and occurred as small isolated patches; and hares occurred at extremely low densities (0.04 hares per ac (0.09 per ha)), well below the range of densities typical of other southern hare populations, had low survival rates, and had poor juvenile recruitment (Wirsing *et al.* 2002, pp. 169–175). The authors identified hare predators including coyotes, raptors, mustelids, and bobcats (Wirsing *et al.* 2002, p. 172), but identified no predation attributable to lynx. Based on the best available information, summarized above, the habitat quality and hare densities in this area appear to be inadequate to support lynx. We find no scientific evidence that this area contains the physical and biological features essential to lynx in adequate quantity and spatial arrangement. We determine that habitats on the Clearwater National Forest do not contain the PCE, are not essential for the conservation of the lynx DPS, and do not meet the definition of critical habitat. As a result we have not designated critical habitat on this national forest.

Portions of the Helena and Lolo National Forests are classified as ''core areas'' for lynx recovery because they have evidence of consistent lynx occupancy and recent records of reproduction (U.S. Fish and Wildlife Service 2005, pp. 4, 21); these areas are designated as critical habitat. Because of this lynx occupancy, both Forests are designated as ''occupied'' in their entirety for section 7 purposes, even though the remainders of these two Forests are considered secondary areas in the recovery outline (U.S. Fish and Wildlife Service 2005, pp. 6, 21) because they lack records of consistent lynx presence. The parts of these two forests that we have not designated continue to lack evidence of lynx occupancy, and surveys (described below) have failed to detect the presence of lynx populations.

On the Helena National Forest, the Big Belt (in 2002, 2003, and 2004) and Elkhorn (in 2003) mountain ranges were surveyed according to the National Lynx Survey protocol (McKelvey *et al.* 1999b, entire); no lynx were detected in any of these surveys (Pengeroth 2013, pers. comm.). On the Lolo National Forest, no lynx were detected during 941 mi (1,514 km) of snow-tracking surveys targeting lynx in the vicinity of Lolo Pass in January–March 2001 (Squires *et al.* 2004c, p. 3). More recently, over 2,600 mi (4,184 km) of forest carnivore snow-tracking surveys were conducted according to accepted protocols (Squires *et al.* 2004b, entire) by highly trained technicians from 2010 to 2013 across much of the Lolo National Forest and on some adjacent lands. These surveys resulted in 199 lynx detections over 4 years, only 1 of which occurred outside the portion of the forest designated as critical habitat in this rule (U.S. Forest Service 2013e, pp. 2–3). The single detection outside the critical habitat boundary was in an area surrounded by critical habitat but at a slightly lower elevation (U.S. Forest Service 2013e, pp. 2, 4). Based on the information summarized above, we conclude that lynx do not occupy the Helena and Lolo National Forests outside the areas we have designated, and that the habitat quality in these areas appears, based on the best available information, to be inadequate to support lynx. We find no scientific evidence that these areas contain the physical and biological features essential to lynx in adequate quantity and spatial arrangement. Therefore, it does not contain the PCE and is not essential for the conservation of the lynx DPS. As a result, we have determined that these areas do not meet the definition of critical habitat, and we have not included these areas in this final critical habitat designation.

Based on historical records and available survey data summarized above (McKelvey *et al.* 2000a, pp. 224–227; U.S. Forest Service 2000, entire; U.S. Forest Service 2002a, 2002b, and 2002c, entire; Wirsing *et al.* 2002, entire; Squires *et al.* 2003, p. 4; U.S. Forest Service 2003a and 2003b, entire; Patton 2006, entire; Squires *et al.* 2006b, p. 15; Ulizio *et al.* 2007, entire; Berg 2009, entire; Porco 2009, entire; Pilgrim 2010,

entire; U.S. Forest Service 2012, unpublished data; Pengeroth 2013, pers. comm.; Pilgrim and Schwartz 2013, entire; Shortsleeve 2013, pers. comm.; U.S. Forest Service 2013c, 2013d, 2013e, entire), the Service has determined that habitats on the Beaverhead-Deerlodge, Bitterroot, Clearwater, and Nez Perce National Forests, and on the Helena and Lolo National Forests outside those areas designated as critical habitat, are not occupied by lynx populations and were likely not occupied at the time of listing. These areas may occasionally host transient dispersing lynx, but the best available information indicates that they do not contain the physical and biological features essential to lynx in adequate quantity and/or spatial arrangement to demonstrate that they contain the PCE, and, as a result, do not meet the definition of critical habitat. We have determined these areas are not essential to the conservation of the lynx DPS, and we have not included these areas in this final designation of critical habitat for the lynx DPS.

Recent Lynx Occurrence in Northern New Hampshire, Northern Vermont, and Eastern and Western Maine

Northern New Hampshire and Northern Vermont

The historic status of lynx in New Hampshire and Vermont is poorly understood. Lynx occurred historically in central and northern New Hampshire, but there is no evidence that a resident breeding population existed there historically or recently (McKelvey *et al.* 2000a, pp. 212–214). In 2003, the Service determined that, despite a lack of breeding records, a small resident lynx population likely occurred historically in New Hampshire but no longer existed at the time of listing (68 FR 40087). A bounty program for lynx that persisted in New Hampshire until 1965, along with a lack of dispersing lynx from Quebec, and habitat loss associated with forest management practices may have contributed to the extirpation of lynx from New Hampshire (Litvaitis *et al.* 1991, pp. 70, 73–74).

Brocke *et al.* (1993, p. 14) similarly speculated that trapping mortality and the concurrent reduction in habitat resulting from large-scale timber harvest led to the extirpation of lynx from New Hampshire. Surveys conducted in 1986 in high-elevation habitats in the White Mountain region of New Hampshire detected no lynx (Litvaitis *et al.* 1991, pp. 70, 73). In 1992, an adult lynx killed by a vehicle collision in southern New Hampshire (McKelvey *et al.* 2000a, p. 213) was classified as a ''transient'' that did not belong to a resident population because hare densities where this lynx died are low and habitat conditions are considered unsuitable for home range establishment (Tur 2013, pers. comm.).

The historic record for Vermont is scant, with only five records of lynx occurring from the period 1797 to 1968 and no evidence that a population of lynx ever occurred there (Kart *et al.* 2005, pp. 101–104). Prior to the listing of the DPS in 2000, the last lynx documented in Vermont was trapped at St. Albans in 1968 (Kart *et al.* 2005, p. A4–101). Based on the best available data, summarized above, we conclude that New Hampshire and Vermont were not occupied by lynx at the time of listing.

Although results of surveys to assess the current distribution and status of lynx in New Hampshire and Vermont are not yet complete, surveys to date in New Hampshire suggest that a small number of lynx are sparsely distributed through the northern half of the State, mostly likely as scattered transient animals, and breeding has only recently been documented by a few lynx in very small areas in the northeastern part of the State. Likewise, in Vermont, several lynx have been documented as breeding within a very small area in the northeast corner of the State. Lynx occurrence in northern New Hampshire and Vermont was documented beginning in 2006, and breeding was first documented in 2009. To date, evidence of lynx reproduction in northern New Hampshire was documented in 2010 and 2011, all in the area encompassing the town of Pittsburg (Staats 2013a, pers. comm.). In Vermont, breeding was documented in 2009, 2011, and 2012, all at the Nulhegan National Wildlife Refuge (NWR) (Cliché 2013, pers. comm.).

Historic records suggest that high-elevation habitats in New Hampshire's White Mountains contained lynx (Silver 1957, pp. 302–311; McKelvey *et al.* 2000a, p. 212); however, surveys conducted during the early 1990s in the White Mountain National Forest did not detect the species (Litvaitis *et al.* 1991, p. 15; Brocke *et al.* 1993, p. 14). No lynx have been detected by White Mountain National Forest staff during winter track surveys conducted since 2003 (Prout 2013, pers. comm.). However, in March 2013, New Hampshire Fish and Game Department staff confirmed the presence of lynx tracks in high-elevation habitat located in the area near Franconia Notch. In addition, snow track surveys conducted by the New Hampshire Fish and Game Department in 2012 and 2013 detected lynx near Cambridge and Success, south of the Lake Umbagog NWR (which has lynx in its Maine portion). Additional records (2006–2013, n=6) occur as far south as Jefferson, NH, at the southern border of the Kilkenny Unit of the White Mountain National Forest. Lynx tracks have also been detected on the Pondicherry NWR, located in Whitefield, NH. Since 2006, New Hampshire has 18 confirmed records, totaling 28 individual animals.

Habitat patches that support lynx in New Hampshire are much smaller than those in northern Maine (Litvaitis and Tash 2005, Fig. 2 and p. A–298; Robinson 2006, Fig. 3.3, p. 99). Hoving estimated roughly 386 mi^2 (1,000 km^2) of lynx habitat in New Hampshire (68 FR 40086–40087). Litvaitis and Tash (2005, p. A–298), analyzing potential lynx habitat in New Hampshire based on the Hoving lynx model, reported an area of 2,000 mi^2 (5,180 km^2) with a greater than 50 percent probability of lynx occurrence. Within this area, ''enriched hare habitats'' (including high-elevation spruce-fir, clearcuts, and shrub-dominated wetlands) consisted of 342 mi^2 (886 km^2), 17 percent of the total predicted lynx habitat area. The authors concluded that ''the modest abundance of high-density hare habitat supports the notion that New Hampshire does not contain sufficient habitat to support a viable, stand-alone population of lynx. Long-term persistence of lynx in New Hampshire is probably dependent on immigrants, and the State likely represents the southern limit of lynx in eastern North America'' (Litvaitis and Tash 2005, p. A–298). Similarly, Brocke *et al.* (1993, pp. 1–14) suggested that the persistence of New Hampshire's lynx population was dependent on receiving dispersing animals. Therefore, persistence of lynx in New Hampshire relies on continuity of habitat through western Maine to the core area of lynx habitat in northern Maine.

Recent modeling to determine lynx habitat connectivity in the Northeast suggests that the Nulhegan River Basin contains Vermont's best lynx habitat (Farrell 2013, pers. comm.). The 205-mi^2 (530-km^2) basin includes 41 mi^2 (106 km^2) managed by the Service, 34 mi^2 (89 km^2) managed by the Vermont Department of Natural Resources, and 131 mi^2 (340 km^2) of private commercial timber lands (with easement). Bobcats occur in the area at moderate densities (Hoving 2001, Fig. 2.5 p. 55). Snow track surveys conducted by State and Service personnel during the winters of 2011 and 2012 (Nulhegan NWR only) and 2012 and 2013 (Nulhegan NWR and Victory Bog State Wildlife Management Area) indicate a small resident lynx population has become established on

the NWR. In areas outside of Nulhegan NWR, the presence of sporadic records indicates lynx have not established home ranges and are considered transient or absent.

Portions of northern New Hampshire and northeastern Vermont contain boreal forest landscapes with a mosaic of habitats of various ages. Although stand-level hare densities in spruce-fir forest in these areas should be similar to densities documented in northern Maine (Litvaitis and Tash 2005, p. A–297), landscape-level hare densities are likely lower because spruce-fir habitat is a lower percentage of the landscape and more fragmented than in core lynx habitat in northern Maine (Hoving 2001, Fig. 2.6, p. 56). The snow regime in northern New Hampshire and northern Vermont also appears adequate for lynx, especially in higher elevation areas, which experience deep, fluffy snow conditions that provide a competitive advantage for lynx, whereas shallower snow in lower elevations may provide competitive advantage to bobcats (Hoving 2001, Fig. 2.2 p. 51). Litvaitis and Tash (2005, p. A–263) modeled bobcat habitat in New Hampshire and concluded that most low-elevation areas that were predicted to have a higher probability of lynx occurrence were also predicted to have moderate-to-high bobcat populations. Conversely, most high-elevation areas that were predicted to have a high probability of lynx occurrence were expected to be avoided by bobcats (at least in the winter). The elevation at which snow benefits lynx versus bobcats in the Northeast is unknown and likely variable.

While historic records indicate that lynx use high-elevation areas in the Northeast, it is unknown if high elevations support high-quality foraging habitat in areas sufficiently large to support breeding individuals. The White Mountain National Forest has the most extensive high-elevation habitat in the Northeast, but only one recent record of lynx occurrence (Staats 2013b, pers. comm.).

Litvaitis and Tash (2005, p. A–298) estimated that New Hampshire contains 342 mi^2 (888 km^2) of potential Canada lynx habitat. There are no comparable lynx habitat estimates for Vermont. Because these areas occur at the southern extreme of the lynx's current distribution, where habitat is interspersed with northern hardwood forests, as well as human-dominated land cover types (e.g., developed areas, roads, agricultural fields, etc.), habitat quality (percent of conifer forest, landscape-level hare density, intensity of forest management) is likely to be lower in New Hampshire and Vermont than in designated critical habitat in northern Maine. Although potential lynx habitat in New Hampshire and Vermont is fragmented, a recently completed habitat connectivity model demonstrated 100 percent connectivity for lynx movement/dispersal between these areas and the core area of northern Maine (Farrell 2013, pers. comm.). Breeding lynx in New Hampshire and Vermont are not directly connected to Canadian populations, but they are connected to the large population in northern Maine via western Maine.

Due to the uncertainty regarding the long-term persistence of the lynx that now occur in these areas, the relative importance of these areas for conservation of the DPS is unclear. These are peripheral boreal forest areas with higher northern hardwood composition and patchier habitat (Hoving 2001, Fig. 2.6, p. 56), and they represent the southern extent of the lynx range (Litvaitis and Tash 2005, p. A–298). Northern Vermont and New Hampshire do not appear to contain adequate lynx habitat to support lynx populations; nor do lynx in these areas appear to be considered potential source populations (Litvaitis and Tash 2005, p. A–298). Although Brocke *et al.* (1993, pp. 1–14) predicted that, in the absence of trapping, New Hampshire's lynx population would be expected to increase at the very modest rate of 1.65 percent per year, this estimate did not account for other sources of lynx mortality (i.e., interspecific interactions with bobcat or vehicle mortality).

As in Colorado, northern New Hampshire and northern Vermont clearly contain habitats that include some or all of the physical and biological features lynx require (some of the components of the PCE). However, it remains uncertain whether they consistently contain the features (e.g., snow conditions that allow lynx to outcompete bobcats, or landscape-level hare densities) in adequate quantity and spatial arrangement to support lynx over time. Moreover, because neither area was occupied by lynx at the time they were listed, to designate them as critical habitat we would have to determine that they are essential for the conservation of the DPS (i.e., that the DPS could not be recovered unless these areas were designated as critical habitat). We do not believe that is the case, and we do not expect that the current small numbers of breeding lynx in these areas will result in the establishment of permanent lynx populations.

In summary, although lynx were known to occur historically in New Hampshire and Vermont, reliable evidence of the ability of these areas to support lynx populations over time is lacking. The best available data indicate that New Hampshire and Vermont were not occupied by lynx at the time of listing. If resident lynx occurred in these areas, they may have been extirpated when habitat was modified through forestry practices, a bounty program was in place that increased mortality, and the ability of animals to recolonize the area was compromised by regional-scale influences that suppressed lynx numbers in adjacent populations.

Recently, habitats in these areas have regenerated and source populations of lynx in northern Maine have increased, likely resulting in dispersal of lynx to New Hampshire and Vermont, where small numbers of breeding lynx have been documented in small areas of northern New Hampshire and northern Vermont only over the past few years (since 2009–2010). Their recent arrival and the complex ecological interactions functioning at landscape scales make it difficult to assess the long-term status of lynx in these areas, as well as their potential contribution to the conservation of the DPS. In addition, potential lynx habitat in these areas is fragmented, landscape-level hare densities are low, and bobcat densities are relatively high. Consequently, these areas are unlikely to support robust lynx populations capable of generating dispersing animals that could occupy other portions of the species' range. The persistence of lynx in New Hampshire is likely reliant upon frequent dispersers from other populations. Because habitats in Vermont are even more localized and fragmented, the same situation most likely exists there. Within these areas, the status of lynx and their habitats may deteriorate further as a result of climate change.

Considering all of the factors above, we believe that northern New Hampshire and northern Vermont do not contain the physical and biological features essential to lynx in adequate quantity and spatial arrangement to support lynx over time. As a result, we have determined these areas do not contain the PCE and do not meet the definition of critical habitat. Further, because neither area was occupied by lynx at the time of listing, to designate these areas as critical habitat we would have to determine they are essential to the conservation of the DPS (i.e., that the DPS could not be recovered unless we designate these areas). We have determined that the small areas in New Hampshire and Vermont recently occupied by a small number of breeding lynx are not essential for the conservation of the lynx DPS, and we have not designated any areas in New

Hampshire or Vermont as critical habitat in this final rule.

Eastern and Western Maine

Historically, lynx are believed to have occurred throughout Maine. Hoving *et al.* (2003, entire) assembled historical records dating to 1833 to reconstruct the past distribution of lynx in the State. Prior to 1913, lynx were found throughout the State, with the exception of coastal areas. From 1913 to 1972, records occurred in western and northern Maine. In 1936 and 1939, game wardens described lynx as rare, but present, in most districts except along the coast (Aldous and Medall 1941, as cited *in* Vashon *et al.* 2012, pp. 28, 33). From 1973 to 1999, most records occurred in western and northern Maine, although lynx also occurred in the central and eastern portions of the State. Between 1995 and 1999, the Maine Department of Inland Fisheries and Wildlife conducted snow track surveys for lynx in western and northern Maine (Vashon *et al.* 2012 pp. 34–35) and documented lynx only in northern Maine. Surveys conducted from 2003 to 2008 documented lynx in both western and northern Maine (Vashon *et al.* 2012, pp. 34–35). Snow surveys for lynx have not been conducted in high-elevation habitats in western Maine. Surveys were not conducted in eastern Maine because there was no evidence that lynx occurred there.

Hoving *et al.* (2003, p. 371) documented 39 historic records spanning 135 years of lynx kittens representing a minimum of 21 litters. Most breeding was documented in northern Maine. Prior to listing, the last documented breeding in western Maine was observed in 1995 and in eastern Maine in 1896 (Hoving 2001, p. 173). Since listing, lynx have been documented consistently in western and northern Maine and occasionally in central and eastern parts of the State (Vashon *et al.* 2012, pp. 12, 59). Lynx breeding has been documented in western, northern, and eastern Maine (the latter at a single location in 2010) (Vashon *et al.* 2012, p. 64). Lynx travel widely during dispersal and occasional forays outside of their home ranges (Vashon *et al.* 2012, pp. 22, 59; Maine Department of Inland Fisheries and Wildlife, unpublished data), which may explain occasional occurrences outside of western and northern Maine.

Portions of eastern and western Maine contain boreal forest landscapes with a mosaic of habitats of various ages, but it is uncertain whether these areas contain the PCE (i.e., the physical and biological features essential to lynx in adequate quantity and spatial arrangement to support lynx populations over time) for the following reasons. Like New Hampshire and Vermont, these areas occur at the southern extreme of the species' current distribution, where habitat is interspersed with northern hardwood forests, as well as human-dominated land cover types (e.g., developed areas, roads, agricultural fields, etc.). Therefore, habitat quality (percent of conifer forest, landscape-level hare density, intensity of forest management) is likely to be lower in eastern and western Maine than in northern Maine. Hoving *et al.* (2004, Fig. 1, p. 290) predicted a low probability of lynx occurrence in western Maine and no lynx occurrence in eastern Maine. Although potential lynx habitat in western Maine is fragmented, it is directly connected to the core area in northern Maine (Farrell 2013, pers. comm.), which we have designated as critical habitat in this rule.

Snowshoe hares were at relatively high densities in northern Maine from 2001 to 2006, but declined by about 50 percent afterward (Scott 2009, pp. 1–44; Vashon *et al.* 2012, p. 14). Lynx populations were believed to have reached the carrying capacity of the habitat in about 2006 (Vashon *et al.* 2012, p. 58). At that time, lynx were likely dispersing at greater rates into western, central, and eastern parts of the State (Vashon *et al.* 2012, Fig. 4.2, p. 59) and were likely the source of lynx in New Hampshire and Vermont.

The snow regime is adequate for lynx in western Maine, especially in higher elevations (Hoving 2001, Fig. 2.2 p. 51), but snow conditions are likely unsuitable for lynx in eastern Maine. Stand-level hare densities also should be similar to those in northern Maine (Litvaitis and Tash 2005, p. A–297), although landscape-level hare densities in western Maine are likely lower because spruce-fir habitat is a lower percentage of the landscape and more fragmented than in core lynx habitat in northern Maine (Hoving 2001, Fig. 2.6, p. 56; Robinson 2006 pp. 81–146). Hare habitat modeling in western Maine indicated patchier and more widely distributed hare habitats compared to northern Maine due to differences in the size and distribution of regenerating clearcuts (Robinson 2006, Fig. 3.3, pp. 99, 181). These areas of western Maine have a higher prevalence of northern hardwoods, which support much lower hare densities.

Carroll (2007, entire) used the Hoving lynx model as a basis to predict lynx distribution in the Northeast under several scenarios affecting forestry, trapping in Canada, and climate change. A reduced snow model predicted lynx would disappear in all of Maine and persist only in the higher elevation areas of the Adirondacks and White Mountain National Forest. However, Hoving (2001, p. 76) used different snowfall projections and models that predict lynx would continue to occur in northern Maine with reduced snow. Carroll's (2007) climate change model was based on predicted annual snowfall for 2055. Predictions were derived from the output of the Parallel Climate Model, a general circulation model developed by a consortium of researchers in support of the IPCC (Kiehl and Gent 2004, entire). The IPCC climate scenario that was used is in the intermediate to high ranges among the 35 scenarios evaluated by the IPCC. Because these predictions provided only coarse resolutions (~200 km), Carroll interpolated the percent change in annual snowfall predicted and multiplied by finer-scale data for current annual snowfall to produce a ''sharpened'' estimate of future snowfall patterns. Carroll's modelling included a lake effect and thus differed slightly in output from that used by Hoving *et al.* (2005).

Although climate change models are being refined for the Northeast, additional information is needed to understand what areas may support lynx in the future under a variety of climate change projections and to resolve high levels of uncertainty. In addition to the potentially conflicting climate models that make projecting lynx conservation into the future challenging, the biological response of lynx to climate change at the regional and stand scales is complex and poorly understood at this time. Thus, we believe it is premature at this time to draw any conclusions regarding how much of Maine is likely to remain suitable for lynx in the future as a result of climate change.

Western and eastern Maine have the highest densities of bobcats in the State (Hoving 2001, pp. 54–55). Maine is at the northern edge of the bobcat range, and their populations decline during severe winters (Morris 1986, entire; Parker *et al.* 1983, entire). In 2008 and 2009, Maine experienced two severe winters with deep snow that may have depressed bobcat populations in western and eastern parts of the State at the same time that larger numbers of lynx were dispersing from northern Maine. These conditions may have allowed lynx to establish home ranges in areas formerly inhabited by bobcats. However, whether lynx will persist in these areas as bobcat populations recover is uncertain.

As in New Hampshire and northern Vermont, some habitats in eastern and western Maine clearly contain some or all of the physical and biological features lynx require. However, it remains uncertain whether they contain the PCE. Because neither area was occupied by lynx at the time they were listed, to designate them as critical habitat we would have to determine that they are essential for the conservation of the DPS (i.e., that the DPS could not be recovered unless these areas were designated as critical habitat). We do not believe that is the case, and we do not expect that the area is needed for the conservation of the species.

In summary, although lynx were known to occur historically in eastern and western Maine, reliable evidence of the ability of these areas to support lynx populations over time is lacking. The best available data, summarized above, suggest that eastern Maine was not occupied by lynx at the time of listing. Within these areas, the status of lynx and their habitats may deteriorate further as a result of climate change. Considering all of these factors, we believe that although eastern and western Maine contain physical and biological features important to lynx, we do not find evidence that these areas contain the features in adequate quantity and spatial arrangement to support lynx populations over time. As a result, we have determined these areas do not contain the PCE and do not meet the definition of critical habitat. We have determined that these areas are not essential to the conservation of the lynx DPS, and we have not designated critical habitat in eastern and western Maine in this final rule.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for lynx. 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. Given the scale of the lynx critical habitat units, it was not feasible to completely avoid inclusion of water bodies, including lakes, reservoirs, and rivers; grasslands; or human-made structures such as buildings, paved and gravel roadbeds, parking lots, and other structures that lack the PCE for the lynx. These areas, including any developed areas and the land on which such structures are located, that exist inside critical habitat boundaries are not intended to be designated as critical habitat. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in this rule. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

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 have made 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–R6–ES–2013–0101, on our Internet sites *http://www.fws.gov/montanafieldoffice/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

We are designating as critical habitat areas that we have determined were occupied by lynx populations at the time of listing and which contain the physical and biological features essential to the conservation of the lynx DPS in sufficient quantity and spatial arrangement to support life-history processes essential to the conservation of lynx populations within the DPS. Units were selected for designation because they contain sufficient elements of the physical and biological features essential for supporting lynx life processes and lynx populations over time. All units contain all of the identified elements of physical or biological features in adequate quantity and spatial arrangements on the landscape and support multiple life processes that allow lynx populations to persist over time.

Final Critical Habitat Designation

We are designating five units as critical habitat for the Canada lynx DPS. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. The designated units are: Unit 1 in northern Maine (Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties); Unit 2 in northeastern Minnesota (Cook, Koochiching, Lake, and St. Louis Counties); Unit 3 in the Northern Rocky Mountains of northwest Montana (Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell and Teton Counties) and northeast Idaho (Boundary County); Unit 4 in the North Cascade Mountains of north-central Washington (Chelan and Okanogan Counties); and Unit 5 in the Greater Yellowstone Area of southwest Montana (Carbon, Gallatin, Park, Stillwater, and Sweetgrass Counties) and northwest Wyoming (Fremont, Lincoln, Park, Sublette, and Teton Counties). All units were occupied by lynx populations at the time of listing and are currently occupied by lynx populations. The approximate area and ownership within each critical habitat unit is shown in Table 1, and the area and ownership by State is shown in Table 2.

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR CANADA LYNX BY OWNERSHIP (MI^2 (KM^2))

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

Unit	Federal	State	Private	Other	Total
1	0 (0)	819 (2,122)	9,281 (24,039)	22 (57)	10,123 (26,218)
2	3,863 (10,005)	2,947 (7,633)	1,259 (3,260)	0 (0)	8,069 (20,899)
3	8,788 (22,761)	156 (404)	839 (2,172)	0 (0)	9,783 (25,337)
4	1,829 (4,737)	0 (0)	5 (14)	0 (0)	1,834 (4,751)
5	8,922 (23,109)	23 (60)	200 (518)	0.5 (1.3)	9,146 (23,687)
Total	23,402 (60,612)	3,945 (10,217)	11,584 (30,003)	23 (59)	38,954 (100,891)

Note: Area sizes may not sum due to rounding.

TABLE 2—DESIGNATED CRITICAL HABITAT FOR CANADA LYNX BY STATE AND OWNERSHIP (MI²/KM²)

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

	Federal	State	Private	Other	Total
Idaho	45 (117)	0.04 (0.1)	0 (0)	0 (0)	45 (117)
Maine	0 (0)	819 (2,122)	9,281 (24,039)	22 (57)	10,123 (26,218)
Minnesota	3,863 (10,005)	2,947 (7,633)	1,259 (3,206)	0 (0)	8,069 (20,899)
Montana	10,978 (28,433)	168 (437)	979 (2,535)	0.5 (1.3)	12,126 (31,405)
Washington	1,829 (4,737)	0 (0)	5 (14)	0 (0)	1,834 (4,751)
Wyoming	6,688 (17,321)	10 (26)	60 (155)	0 (0)	6,758 (17,502)
Total	23,402 (60,612)	3,945 (10,217)	11,584 (30,003)	23 (59)	38,954 (100,891)

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 the lynx DPS, below.

Unit 1: Northern Maine

Unit 1 consists of 10,123 mi² (26,218 km²) located in northern Maine in portions of Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties. This area was occupied by the lynx at the time of listing and is currently occupied by the species (Hoving *et al.* 2003, entire; Vashon *et al.* 2012, pp. 12–14, 58–60; Interagency Lynx Biology Team 2013, pp. 39–42). This area contains the physical and biological features essential to the conservation of the lynx DPS as it comprises the PCE and its components laid out in the appropriate quantity and spatial arrangement. Lynx in northern Maine have high productivity: 91 percent of available adult females (greater than 2 years) produced litters, and litters averaged 2.83 kittens (Vashon *et al.* 2005b, pp. 4–6; Vashon *et al.* 2012, p. 18). This area is also important for lynx conservation because it is the only area in the northeastern region of the lynx's range within the contiguous United States that currently supports a resident breeding lynx population and likely acts as a source or provides connectivity with Canada for more peripheral portions of the lynx's range in the Northeast.

Timber harvest and management are the dominant land uses within the unit; therefore, special management may be required depending on the silvicultural practices implemented (68 FR 40075). Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, climate change is predicted to significantly reduce lynx habitat and population size. Carroll (2007, pp. 1100–1103) modeled a 59 percent decline in lynx numbers in the northeastern United States and eastern Canada by 2055 due to climate change, with greater vulnerability among small, peripheral, low-elevation populations like that in Maine. Under this modeled scenario, populations would have difficulty sustaining themselves, and the lynx distribution would likely contract to the core of the population on the Gaspe Peninsula in Quebec, Canada (Carroll 2007, p. 1102). Gonzalez *et al.* (2007, p. 14) modeled potential climate-induced loss of snow and concluded that snow suitable for lynx may disappear from Maine entirely by the end of this century. Therefore, climate change represents a potential habitat-related threat to lynx in this unit.

Changing forest management practices are also likely to result in reduced hare and lynx habitat in this unit. Much of the lynx and hare habitat in this unit is the result of broad-scale clear-cut timber harvest in the 1970s and 1980s in response to a spruce budworm outbreak and the subsequent treatment of some clearcuts with herbicide to promote conifer regeneration. These clear-cut stands are now at a successional (regrowth) stage (about 35 years postharvest) that features very dense conifer cover and provides optimal hare and lynx habitats, likely supporting many more hares and lynx than occurred historically. The Maine Forest Practices Act (1989) limited the size of clearcuts, resulting in a near complete shift away from clearcuts to partial harvesting. This transition to partial harvest timber management is unlikely to create or maintain the extensive tracts of hare and lynx habitats that currently exist as a result of previous clearcutting. As the clear-cut stands continue to age, their habitat value to hares and lynx is expected to decline. Even in the absence of climate change considerations, forest succession and reduced clearcutting are expected to result in a substantially smaller lynx population in this unit by 2035 (Simons 2009, pp. 153–154, 162–165, 206, 216–220; Vashon *et al.* 2012, pp. 58–60). Therefore, the potential for forest management practices to result in reduced quantity and quality of lynx and hare habitats represents a habitat-related threat to lynx in this unit. Other potential habitat-related threats to lynx in this unit are habitat loss and fragmentation due to road and highway construction (along with associated increases in traffic volumes and/or speeds) and commercial, recreational, and wind-energy development.

In this final rule, we have not designated critical habitat on Tribal lands in this unit nor on lands managed in accordance with the Natural Resources Conservation Service's Healthy Forest Reserve Program (see Consideration of Impacts under section 4(b)(2) of the Act, below).

Unit 2: Northeastern Minnesota

Unit 2 consists of 8,069 mi² (20,899 km²) located in northeastern Minnesota in portions of Cook, Koochiching, Lake, and St. Louis Counties, and Superior National Forest. In 2003, when we formally reviewed the status of the lynx, numerous verified records of lynx existed from northeastern Minnesota (68 FR 40076). The area was occupied at the time of listing and is currently occupied by the species (Moen *et al.* 2008b, pp. 29–32; Moen *et al.* 2010, entire; Catton and Loch 2010, entire; 2011, entire; 2012, entire; Interagency Lynx Biology Team 2013, pp. 44–47). Lynx are currently known to be distributed throughout northeastern Minnesota, as has been confirmed through DNA analysis, radio- and GPS-collared animals, and documentation of reproduction (Moen *et al.* 2008b, entire; Moen *et al.* 2010, entire). This area contains the physical and biological features essential to the conservation of the lynx DPS as it comprises the PCE and its components laid out in the appropriate quantity and spatial arrangement. This area is essential to the conservation of lynx because it is the only area in the Great Lakes Region for which there is evidence of recent lynx reproduction. It likely acts as a source or provides connectivity for more peripheral portions of the lynx's range in the region.

Timber harvest and management are dominant land uses (68 FR 40075). Therefore, special management may be required depending on the silvicultural practices implemented. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, climate change may affect lynx and their habitats; however, Gonzalez *et al.* (2007, p. 14) suggested that snow conditions in northern Minnesota should continue to be suitable for lynx through the end of this century. Nonetheless, because climate change may alter vegetation communities and, hence, hare densities, it still represents a potential habitat-related threat to lynx in this unit. Fire suppression or fuels treatment, habitat fragmentation associated with road-building (and associated increases in traffic volumes and/or speeds), and commercial, recreational, and energy/mineral development pose other potential habitat-related threats to lynx in this unit. Incidental capture of lynx in traps set for other species has been documented recently in Minnesota, as have lynx mortalities from vehicle collisions (U.S. Fish and Wildlife Service 2013d, unpubl. database).

In this final rule, we have not designated critical habitat on Tribal lands in this unit (see Consideration of Impacts under section 4(b)(2) of the Act, below).

Unit 3: Northern Rocky Mountains

Unit 3 consists of 9,783 mi² (25,337 km²) located in northwestern Montana and a small portion of northeastern Idaho in portions of Boundary County in Idaho and Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell, and Teton Counties in Montana. It includes National Forest lands and BLM lands in the Garnet Resource Area. This area was occupied by lynx at the time of listing and is currently occupied by the species (Squires *et al.* 2010, entire; Squires *et al.* 2012, entire; Squires *et al.* 2013, entire; Interagency Lynx Biology Team 2013, pp. 57–61). Lynx are known to be widely distributed throughout this unit, and breeding has been documented in multiple locations (Gehman *et al.* 2004, pp. 24–29; Squires *et al.* 2004a, pp. 8–10, 2004b, entire, and 2004c, pp. 7–10). This area contains the physical and biological features essential to the conservation of the lynx DPS as it comprises the PCE and its components laid out in the appropriate quantity and spatial arrangement. This area is essential to the conservation of lynx because it appears to support the highest density lynx populations in the Northern Rocky Mountain region of the lynx's range. It likely acts as a source for lynx and provides connectivity to other portions of the lynx's range in the Rocky Mountains, particularly the Greater Yellowstone Area.

Timber harvest and management are dominant land uses (68 FR 40075); therefore, special management may be required depending on the silvicultural practices implemented. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, climate change is expected to result in the potential loss of snow conditions suitable for lynx by the end of this century (Gonzalez *et al.* 2007, p. 14). Therefore, climate change represents a potential habitat-related threat to lynx in this unit. Fire suppression or fuels treatment, habitat fragmentation associated with road-building (and associated increases in traffic volumes and/or speeds), and commercial, recreational, and energy/mineral development pose other potential habitat-related threats to lynx in this unit.

In this final rule, we have not designated critical habitat on Tribal lands in this unit nor on lands managed in accordance with the MDNRC HCP (see Consideration of Impacts under section 4(b)(2) of the Act, below).

Unit 4: North Cascades

Unit 4 consists of 1,834 mi² (4,751 km²) located in north-central Washington in portions of Chelan and Okanogan Counties and includes mostly Okanogan-Wenatchee National Forest lands as well as BLM lands in the Spokane District and Loomis State Forest lands. This area was occupied at the time lynx was listed and is currently occupied by the species (Interagency Lynx Biology Team 2013, pp. 64–65). This area contains the physical and biological features essential to the conservation of the lynx DPS as it comprises the PCE and its components laid out in the appropriate quantity and spatial arrangement. This unit supports the highest densities of lynx in Washington (Stinson 2001, p. 2). Evidence from recent research and DNA analysis shows lynx distributed within this unit, with breeding being documented (von Kienast 2003, p. 36; Koehler *et al.* 2008, entire; Maletzke *et al.* 2008, entire). Although researchers have fewer records in the portion of the unit south of Highway 20, few surveys have been conducted there. This area contains boreal forest habitat and the components essential to lynx conservation. Further, it is contiguous with the portion of the unit north of Highway 20, particularly in winter when deep snows close Highway 20. The northern portion of the unit adjacent to the Canada border also appears to support few recent lynx records; however, it is designated wilderness, so access to survey this area is difficult. This northern portion also contains extensive boreal forest vegetation types and the components essential to lynx conservation. Additionally, lynx populations exist in British Columbia directly north of this unit (Interagency Lynx Biology Team 2013, p. 65). This area is essential to the conservation of the lynx DPS because it is the only area in the Cascades region of the lynx's range that is known to support breeding lynx populations.

Timber harvest and management are dominant land uses; therefore, special management may be required depending on the silvicultural practices implemented. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. In this area, Federal land management plans are being amended to incorporate lynx conservation. Climate change is expected to reduce lynx habitat and numbers in this unit, with potential loss of snow suitable for lynx (Gonzalez *et al.* 2007, p. 14) and the potential complete disappearance of lynx from the area by the end of this century (Johnston *et al.* 2012, pp. 7–11). Therefore, climate change represents a potential habitat-related threat to lynx in this unit. Fire suppression or fuels treatment, habitat fragmentation associated with road-building (and associated increases in traffic volumes and/or speeds), and recreational and energy/mineral development pose other potential habitat-related threats to lynx in this unit.

In this final rule, we have not designated critical habitat in this unit on lands managed in accordance with the WDNR Lynx Habitat Management Plan (see Consideration of Impacts under section 4(b)(2) of the Act, below).

Unit 5: Greater Yellowstone Area

Unit 5 consists of 9,146 mi² (23,687 km²) located in Yellowstone National Park and surrounding lands of the Greater Yellowstone Area in southwestern Montana and northwestern Wyoming. Lands in this unit are found in Carbon, Gallatin, Park, Stillwater, and Sweetgrass Counties in Montana; and Fremont, Lincoln, Park, Sublette, and Teton Counties in Wyoming. This area was occupied by lynx at the time of listing and is thought to be currently occupied by a small but persistent lynx population (Squires and Laurion 2000, entire; Squires *et al.* 2001,

entire; Murphy *et al.* 2006, entire; Interagency Lynx Biology Team 2013, pp. 57–61). This area contains the physical and biological features essential to the conservation of the lynx DPS as it comprises the PCE and its components laid out in the appropriate quantity and spatial arrangement. The Greater Yellowstone Area is naturally marginal lynx habitat with highly fragmented foraging habitat (68 FR 40090; 71 FR 66010, 66029; 74 FR 8624, 8643–8644; Hodges *et al.* 2009, entire). For this reason lynx home ranges in this unit are likely to be larger and incorporate large areas of non-foraging matrix habitat.

Timber harvest and management are dominant land uses on National Forest System lands in this unit; therefore, special management may be required depending on the silvicultural practices implemented. Timber management practices that provide for a dense understory are beneficial for lynx and snowshoe hares. Climate change is expected to reduce lynx habitat and numbers in this unit, with potential loss of snow suitable for lynx over most of the area by the end of this century, though with potential snow refugia in the Wyoming Range Mountains (Gonzalez *et al.* 2007, p. 14). Therefore, climate change represents a potential habitat-related threat to lynx in this unit. Fire suppression or fuels treatment, habitat fragmentation associated with road-building (and associated increases in traffic volumes and/or speeds), and recreational and energy/mineral development pose other potential habitat-related threats to lynx in this unit. Therefore, special management is required depending on the fire suppression and fuels treatment practices conducted and the design of highway and energy development projects.

In this final rule, we have not designated critical habitat in this unit on lands managed in accordance with the MDNRC HCP (see Consideration of Impacts under section 4(b)(2) of the Act, below).

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 designated critical habitat.

Decisions by the Fifth and Ninth 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, 434 (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 provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the lynx DPS. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any

proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, are required to undergo consultation in accordance with section 7 of the Act to evaluate potential impacts to habitats essential to the conservation of the lynx DPS. These activities include, but are not limited to:

(1) Actions that would reduce or remove understory vegetation within boreal forest stands on a scale proportionate to the large landscape used by lynx. Such activities could include, but are not limited to, forest stand thinning, timber harvest, and fuels treatment of forest stands. These activities could significantly reduce the quality of snowshoe hare habitat such that the landscape's ability to produce adequate densities of snowshoe hares to support lynx populations is at least temporarily diminished.

(2) Actions that would cause permanent loss or conversion of the boreal forest on a scale proportionate to the large landscape used by lynx. Such activities could include, but are not limited to, recreational area developments; certain types of mining activities and associated developments; and road building. Such activities could eliminate and fragment lynx and snowshoe hare habitat.

(3) Actions that would increase traffic volume and speed on roads that divide lynx critical habitat. Such activities could include, but are not limited to, transportation projects to upgrade roads or development of a new tourist destination. These activities could reduce connectivity within the boreal forest landscape for lynx, and could result in increased mortality of lynx within the critical habitat units, because lynx are highly mobile and frequently cross roads during dispersal, exploratory movements, or travel within their home ranges.

In matrix habitat, activities that change vegetation structure or condition would not be considered an adverse effect to lynx critical habitat unless those activities would create a barrier or impede lynx movement between patches of foraging habitat and between foraging and denning habitat within a potential home range, or if they would adversely affect adjacent foraging habitat or denning habitat. For example, a pre-commercial thinning or fuels reduction project in matrix habitat would not adversely affect lynx critical habitat, and would not require consultation. However, a new highway passing through matrix habitat that would impede lynx movement may be an adverse effect to lynx critical habitat, and would require consultation. The scale of any activity should be examined to determine whether direct or indirect alteration of habitat would occur to the extent that the value of critical habitat for the survival and recovery of lynx would be appreciably diminished.

If you have questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat, contact the Supervisor of the appropriate Ecological Services Field Office (see list below).

State	Address	Phone No.
Maine	17 Godfrey Drive, Suite 2, Orono, ME 04473	(207) 866–3344
Minnesota	4101 American Boulevard East, Bloomington, Minnesota 55425	(612) 725–3548
Montana	585 Shepard Way, Suite 1, Helena, Montana 59601	(406) 449–5225
Idaho and Washington	11103 E. Montgomery Drive, Spokane, Washington 99206	(509) 893–8015
Wyoming	5353 Yellowstone Road, Suite 308A, Cheyenne, Wyoming 82009	(307) 772–2374

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within this final critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat upon a determination that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless doing so would, based on the best scientific data available, 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 destruction or adverse modification of critical habitat as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides conservation benefits equal to or greater than those provided by a critical habitat designation.

In the case of the lynx DPS, the benefits of critical habitat include promotion of public awareness of the presence of the species and the importance of habitat protection, and in cases where a Federal nexus exists, potentially greater habitat protection for lynx due to the protection from destruction or adverse modification of critical habitat.

When we evaluate the benefits of excluding particular areas for which conservation plans have been developed, 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 cannot exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding the following areas from critical habitat designation for the Canada lynx DPS: (1) Tribal lands, which occur in units 1, 2, and 3; (2) private lands in Maine managed in accordance with the Natural Resources Conservation Service's (NRCS) Healthy Forest Reserve Program (75 FR 6539); (3) State lands in western Montana managed in accordance with the Montana Department of Natural Resources and Conservation (MDNRC) Forested State Trust Lands Habitat Conservation Plan (HCP) (Montana Department of Natural Resources and Conservation and U.S. Fish and Wildlife Service 2010a, entire; 2010b, entire; 2010c, entire); and (4) State lands in northern Washington managed in accordance with the State of Washington Department of Natural Resources (DNR) Lynx Habitat Management Plan for DNR-managed Lands (Washington DNR 2006, entire). Table 3 below provides approximate areas of lands that meet the definition of critical habitat but which we have excluded from the final critical habitat rule under section 4(b)(2) of the Act. For additional details on these plans, see *Exclusions Based on Other Relevant Impacts,* below.

TABLE 3—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION FOR CANADA LYNX BY CRITICAL HABITAT UNIT

Unit	Specific area	Area in mi² (km²) excluded from final critical habitat designation
1. Maine	Tribal Lands: Passamaquoddy Tribe, Penobscot Indian Nation	95.7 (248)
1. Maine	Maine Healthy Forest Reserve Program	943.2 (2,443)
2. Minnesota	Tribal Lands: Grand Portage Reservation, Bois Forte Reservation—Vermillion Lake District.	77.9 (202)
3. Northern Rocky Mountains	Tribal Lands: Confederated Salish and Kootenai Tribes, Flathead Reservation	369.6 (957)
3. Northern Rocky Mountains	Montana DNRC Multispecies Habitat Conservation Plan	271.4 (703)
4. North Cascade Mountains	Washington DNR Lynx Habitat Management Plan	164.2 (425)
5. Greater Yellowstone Area	Montana DNRC Multispecies Habitat Conservation Plan	1.3 (3)

Consideration of Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. To consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (U.S. Fish and Wildlife Service and IEc, Inc. 2014, entire). The analysis, dated June 11, 2014, was made available for public review from June 20, 2014, through July 21, 2014 (79 FR 35303). The DEA addressed potential economic impacts of critical habitat designation for the lynx DPS. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on that evaluation, the probable incremental economic impacts of critical habitat designation for the lynx DPS are summarized below. Additional information relevant to our evaluation of incremental economic impacts is available in the final economic analysis for the designation of critical habitat for the lynx DPS (U.S. Fish and Wildlife Service and IEc, Inc. 2014, entire), available at *http://www.regulations.gov, and at our Web site: http://www.fws.gov/mountain-prairie/species/mammals/lynx/index.htm.*

Revised critical habitat for the lynx DPS is very unlikely to generate incremental economic costs exceeding $100 million in a single year (see additional discussion of this threshold in the *Unfunded Mandates Reform Act* section, below). Data limitations prevent the quantification of benefits. The economic costs of implementing the rule through section 7 of the Act will most likely be limited to the additional administrative effort required to consider adverse modification during section 7 consultations for activities with a Federal nexus. This finding is based on the following factors:

(1) All units are considered currently occupied, providing baseline protection via section 7 consultations addressing the jeopardy standard;

(2) Activities occurring within designated critical habitat with a potential to affect critical habitat are also likely to jeopardize the species, either directly or indirectly;

(3) Project modifications requested to avoid adverse modification are likely to be the same as those needed to avoid jeopardy;

(4) On Federal lands, as well as some private and State lands, ongoing conservation efforts offer additional baseline protection; and

(5) Critical habitat is unlikely to increase the annual consultation rate for two primary reasons:

(a) The existing awareness of the need to consult due to the listing of the species; and

(b) The fact that the 2009 critical habitat designation covered 89 percent of the areas designated as critical habitat in this final rule.

According to a review of consultation records and discussions with multiple Service field offices, the additional administrative cost of addressing adverse modification during the section 7 consultation process ranges from approximately $400 to $5,000 per consultation (2014 dollars). Based on

the historical consultation activity, we forecast an annual consultation rate of approximately 161 per year, resulting in costs ranging from $64,400 to $805,000 annually (2014 dollars). Thus, the incremental administrative burden resulting from the rule is well below the threshold of $100 million in a given year.

The revised designation of critical habitat for the lynx DPS is not expected to trigger additional requirements under State or local regulations. This assumption is based on the array of existing baseline protections for the lynx and the general awareness of State agencies of the presence of the species. The revised designation may cause land managers, landowners, or developers to perceive that private lands will be subject to use restrictions, resulting in costs. However, such impacts, if they occur, are very unlikely to reach $100 million in a given year.

No additional section 7 efforts to conserve the lynx DPS are predicted to result from the revised designation of critical habitat. If, however, public perception of the effect of critical habitat causes changes in future land use, benefits to the species and environmental quality may occur. Due to existing data limitations, we are unable to assess the likely magnitude of such benefits.

The majority of anticipated future consultations are expected to occur in Unit 5 (Greater Yellowstone Area). Costs resulting from public perception of the impact of critical habitat, if they occur, are more likely to occur in Unit 4 (North Cascades) and private lands located in Unit 1 (Northern Maine).

Exclusions Based on Economic Impacts

Our 2014 and 2009 economic analyses did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the lynx DPS based on economic impacts.

Both the current economic analysis (U.S. Fish and Wildlife Service and IEc, Inc. 2014, entire) and the final economic analysis completed for the 2009 critical habitat designation for the lynx DPS (IEc, Inc. 2008, entire) specifically addressed potential economic impacts to the Washington State Snowmobile Association (WASSA) and the groups it represents. Both analyses, incorporated here by reference in their entireties, considered the comments and regional economic assessments provided by the WASSA in response to the 2008 and 2013 proposed designations. In our analyses, we have carefully evaluated potential impacts to snowmobiling interests throughout the critical habitat designation, and specifically with regard to the concerns of the WASSA and the Wyoming State Snowmobile Association.

Snowmobiling occurs throughout the areas designated as lynx critical habitat, and understanding of the potential effects of snowmobiling on lynx continues to evolve. Concerns about potential negative impacts of snowmobiling are based primarily on the hypothesis that compacted over-the-snow trails could result in increased competition between lynx and other snowshoe hare predators, such as coyotes, in areas where deep snow would otherwise preclude or minimize such competition (Buskirk *et al.* 2000a, pp. 86–95). Research on the relationship between coyotes, lynx, and lynx habitat has provided mixed results regarding this hypothesis, with several studies showing that coyotes use compacted snow trails, but none indicating increased competition or substantial dietary overlap between lynx and coyotes (Interagency Lynx Biology Team 2013, pp. 80–82). In response to this uncertainty, the 2013 revisions to the LCAS provided more flexibility with respect to the management of recreational activities in lynx habitat, and snowmobiling stakeholders have largely expressed approval of the 2013 LCAS revisions (U.S. Fish and Wildlife Service and IEc, Inc. 2014, pp. 11–12).

Between 3,000 and 5,000 miles of trails are available for snowmobiling in Washington, of which about 200 miles (4.0–6.7 percent) occur within the revised critical habitat designation. A 2003 study estimated that the number of people participating in snowmobiling would increase 43 percent by the year 2013 (State of Washington 2003, pp. 4, 41); however, it is not clear whether this level of increase has occurred. In 2001, Washington State University and the WASSA conducted a snowmobile usage study and concluded that the annual economic impact of snowmobiling in Washington was $92.7 million dollars. In response to the 2009 critical habitat designation, WASSA estimated that snowmobiling accounted for nearly $8.5 million in direct expenditures and $4.1 million in indirect spending in Methow Valley, an area adjacent to designated critical habitat.

The WASSA, which represents about 30,000 registered snowmobilers and nearly 100 snowmobile-related businesses, has again expressed concern that critical habitat designation may generate significant economic impacts to the snowmobiling industry. Specifically, the WASSA is concerned that people will perceive that the designation will limit snowmobiling and in turn will be less likely to invest in snowmobiling equipment, that the designation will prevent an increase in over-the-snow trails thus resulting in congestion, and that the designation will present an additional regulatory burden for future attempts to expand or increase the number of trails in the area (U.S. Fish and Wildlife Service and IEc, Inc. 2014, p. 13).

Although annual data on snowmobiling participation in Washington since 2009 are not readily available, the critical habitat designation is not anticipated to adversely change snowmobiling in Washington (U.S. Fish and Wildlife Service and IEc, Inc. 2014, p. 13). We evaluated whether and how snowmobiling activities in Maine and Minnesota were affected as a result of the 2009 critical habitat designation, and we found no significant changes in snowmobiling activities have been observed there since the 2009 designation (U.S. Fish and Wildlife Service and IEc, Inc. 2014, p. 13). We have had no reports of significant economic impacts to snowmobiling interests in the other areas designated as critical habitat in 2009 (western Montana, northern Idaho, and northwestern Wyoming).

In response to our 2013 proposed critical habitat designation, the WASSA resubmitted the sector assessment study it previously commissioned on the regional economic impacts of the 2008 proposed critical habitat rule. The WASSA study assumes that lynx conservation efforts will result in an overall loss of winter visitors and tourism spending within the region. The study employs a regional input/output model, estimating the potential cost of the critical habitat designation to be $262,000 to $1,645,000 (2013 dollars) through the year 2025, assuming a seven percent discount rate. This present-value sum translates to approximately $27,000 to $168,500 on an annualized basis, assuming a seven percent discount rate.

Based on both the current economic analysis (U.S. Fish and Wildlife Service and IEc, Inc. 2014, entire) and the final economic analysis completed for the 2009 critical habitat designation for the lynx DPS (IEc, Inc. 2008, entire), we have determined that the designation of critical habitat for the lynx DPS will not result in disproportionate economic impacts to snowmobiling interests anywhere within the designated areas, and specifically with regard to those interests represented by the WASSA and the Wyoming State Snowmobile Association. We have made this

evaluation available to the Secretary for her consideration when determining whether to exercise her discretion to exclude these or other areas based on baseline and incremental economic impacts. Based on her consideration of this evaluation, the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the lynx DPS based on economic impacts.

Exclusions Based on National Security Impacts or Homeland Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this final rule, we have determined that no lands within the designation of critical habitat for the lynx DPS are owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security or homeland security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we also consider any other relevant impacts resulting from the designation of critical habitat. We consider a number of factors, including whether the landowners have developed any 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.

Consideration of Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides a conservation benefit for the species and its habitat;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We have determined that the following partnerships, program, and plans fulfill the above criteria, and we are, therefore, excluding from critical habitat the areas of non-Federal lands covered by them because they provide for the conservation of the lynx DPS.

Tribal Lands Conservation Partnerships

Tribal lands in Maine, Minnesota, and Montana fall within the boundaries of designated critical habitat in units 1 (Maine), 2 (Minnesota), and 3 (Northern Rocky Mountains). Tribal lands include those of the Passamaquoddy Tribe and the Penobscot Indian Nation in Maine, the Grand Portage Indian Reservation and Bois Forte Indian Reservation—Vermillion Lake District in Minnesota, and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation in Montana. The amount of Tribal lands that occur within the final designation is relatively small in size, totaling approximately 543.2 mi^2 (1,407 km^2), which represents 1.4 percent of the total final designation.

In the proposed rule, we requested comments on whether Tribal lands in Maine, Minnesota, and the Northern Rockies should be excluded pursuant to Executive Order 3206. We also contacted a number of Tribes to discuss the proposed designation and, as they had done previously during discussions regarding the 2009 designation, the Tribes again requested that their lands not be designated as critical habitat because of their sovereign rights, in addition to concerns about economic impacts and the effect on their ability to manage natural resources.

Benefits of Inclusion

The primary benefit of including Tribal lands in the lynx critical habitat designation would be education that could be exchanged on land management methods that would benefit the species. Potentially, some activities could be authorized, funded, or carried out by a Federal agency, which would require consultation and perhaps action modification to ensure that the physical and biological features essential to lynx are not destroyed or adversely modified.

Benefits of Exclusion

Tribal lands are small in size relative to the large landscape required to sustain the lynx populations in these areas. The larger landscape in Maine comprises lands managed for commercial forestry, and in Minnesota and Montana the larger landscape is managed by the USFS, which revised its forest plans to address the conservation needs of lynx. Therefore, although these Tribal lands support lynx habitat and the PCE, they have a minor role in lynx conservation compared to the extensive commercial forestlands in Maine and National Forest lands in Minnesota and Montana. Due to Tribal natural resource management philosophies, plans, and practices that are designed to avoid adverse effects to lynx and lynx habitat, and that are already in place on Tribal lands, it is highly unlikely that activities approaching the threshold of adverse modification of critical habitat would occur.

Tribal lands of the Passamaquoddy Tribe and the Penobscot Indian Nation fall within lynx critical habitat in Maine. These lands represent only 0.9 percent of the total critical habitat designation in Unit 1. The Environmental Mission of the Passamaquoddy Tribe is: ''to protect the environment and conserve natural resources within all Passamaquoddy lands, waters, and the air we share'' (Passamaquoddy Tribe 2014, entire). Through Federal grant programs, the Passamaquoddy Tribe is also conducting surveys and developing habitat models for lynx and snowshoe hare, which will likely lead to better understanding and management of lynx and hare habitats on Tribal lands. The mission of the Penobscot Indian Nation's Department of Natural Resources is: ''. . . to manage, develop and protect the Penobscot Nation's natural resources in a sustainable manner that protects and enhances the cultural integrity of the Tribe'' (Penobscot Indian Nation 2014, entire). Further, the Penobscot Indian Nation's Inland Fish and Game Regulations prohibit the hunting, trapping, or possessing of Canada lynx (Penobscot Indian Nation 2012, p. 15).

Tribal lands of the Grand Portage Indian Reservation and the Bois Forte Indian Reservation—Vermillion Lake District fall within lynx critical habitat in Minnesota. These lands represent only 1 percent of the total critical habitat designation in Unit 2. The Grand Portage Band of Chippewa has been actively working on lynx conservation since 2004. In October 2007, the Band hosted an international conference on lynx research and conservation where more than 50 researchers from the United States and Canada presented results of research on lynx diet, habitat, and management. Additionally, on-reservation timber sales and harvest practices follow an integrated management plan for priority wildlife

management, sustainable economic development, and recreational uses. The Band's timber management practices benefit populations of snowshoe hares, the lynx's primary prey (Deschampe 2008, entire).

Tribal lands of the Confederated Salish and Kootenai Tribes, Flathead Indian Reservation fall within lynx critical habitat in Montana. These lands represent only 3.8 percent of the total critical habitat designation in Unit 3. The mission statement of the Tribes' Fish, Wildlife, Recreation and Conservation Division is: ''to protect and enhance the fish, wildlife, and wildland resources of the Tribes for continued use by the generations of today and tomorrow'' (Confederated Salish and Kootenai Tribes 2014a, entire). An objective of the Tribes' *Tribal Wildlife Management Program Plan* is to ''. . . develop and implement habitat management guidelines for Canadian lynx in coordination with the Forestry Department as specified in the Forest Management Plan'' (Confederated Salish and Kootenai Tribes. 2014b, p. 5). The Forest Management Plan states that ''Standards for lynx management and habitat protection are set forth in the Canada Lynx Conservation Assessment and Strategy. This strategy guides land management activity in lynx foraging and denning habitat. Lynx occurrence and populations will continue to be monitored on the Reservation'' (Confederated Salish and Kootenai Tribes. 2000, p. 285). Additionally, most lynx and lynx habitat on the reservation occur in areas with formal protective status, including: (1) The long-designated Mission Mountains and Rattlesnake Tribal Wilderness Areas, which are largely roadless and managed for wilderness qualities; (2) the South Fork/Jocko Primitive Area, which is open to use only by Tribe members and in which commercial timber harvest is prohibited; and (3) the Nine-mile Divide country, which is marginal in terms of lynx habitat, but which is also partly roadless (Courville 2014, pers. comm.).

Because of the protected status of these areas and the prohibition on activities that could impact lynx and their habitats, it is unlikely that additional special management considerations are necessary for these Tribal lands or that additional benefit to lynx would result from designating them as critical habitat.

Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997) states that, ''Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species''. 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 relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2) also emphasize that Tribal lands should be evaluated to determine whether their inclusion in a critical habitat designation is essential to the species. Therefore, we believe that fish, wildlife, and other natural resources on Tribal lands are better managed under Tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Such designation is often viewed by Tribes as an unwanted intrusion into Tribal self-governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Exclusion of Tribal lands is warranted because affected Tribes already take actions to avoid negative impacts to lynx and to conserve lynx and hare habitats. Through Federal grant programs, the Passamaquoddy Tribe is conducting surveys and habitat models for lynx and snowshoe hare, the Grand Portage Tribe is assessing lynx habitat on reservation lands, and lynx habitat is protected through a comprehensive conservation plan and non-development land designations on the Flathead Reservation in Montana. Information from these efforts will be used to inform management plans or strategies to promote the conservation of lynx on Tribal lands. Additionally, we received comments from Tribes voicing their commitment to ensuring that lynx remain a viable part of the ecosystem.

We have determined that conservation of lynx can be achieved on Tribal lands within the critical habitat units through the continuation of the cooperative partnerships between the Service and the Tribes, and without designating them as critical habitat. The management plans, activities, and land-use designations being implemented on Tribal lands described above are likely to ensure continued conservation of lynx on Tribal lands. Given the importance of our government-to-government relationship with Tribes, the benefit of maintaining our commitment to the Executive Order by excluding these lands outweighs the benefit of including them in critical habitat. Therefore, pursuant to section 4(b)(2) of the Act, we have not designated critical habitat for the lynx DPS on Tribal lands in Units 1, 2, and 3 in this final rule.

Exclusion Will Not Result in Extinction of the Species

We have determined that exclusion of Tribal lands from the designation of critical habitat for the lynx will not result in the extinction of the species because the Passamaquoddy Tribe, Penobscot Indian Nation, Grand Portage Indians, Bois Forte Indians, and Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation implement programs for the conservation of the species, and the physical and biological features essential to it, in occupied areas. The protections afforded to the lynx under the jeopardy standard will remain in place for the areas considered for exclusion from revised critical habitat. Therefore, and in light of Secretarial Order 3206 and Tribal management of lynx and their habitat, 95.7 mi^2 (248 km^2) of Tribal lands in Maine, 77.9 mi^2 (202 km^2) in Minnesota, and 369.6 mi^2 (957 km^2) in Montana have been excluded from lynx critical habitat designation in this final rule.

Maine Healthy Forest Reserve Program (HFRP)

In 2003, Congress passed the Healthy Forest Restoration Act. Title V of this Act designates a Healthy Forest Reserve Program (HFRP) with objectives to: (1) promote the recovery of threatened and endangered species, (2) improve biodiversity, and (3) enhance carbon sequestration. In 2006, Congress provided the first funding for the HFRP, and Maine, Arkansas, and Mississippi were chosen as pilot States to receive funding through their respective Natural Resources Conservation Service (NRCS) State offices. Based on a successful pilot program, in 2008, the HFRP was reauthorized as part of the Farm Bill, and in 2010, NRCS published a final rule in the **Federal Register** (75 FR 6539) amending regulations for the HFRP based on provisions amended by the bill.

In 2006 and 2007, the NRCS offered the HFRP to landowners in the proposed Canada lynx critical habitat unit in Maine to promote development of Canada lynx forest management plans. At that time, five landowners enrolled in the Maine HFRP, and collectively signed contracts (with NRCS) committing to developing lynx forest management plans on 1,069.8 mi^2 (2,770.7 km^2). However, one of the

landowners has since discontinued enrollment in the program. Because of that and other mapping refinements, the amount of land currently managed in accordance with Maine HFRP is 943.2 mi^2 (2,443 km^2), or 9.3 percent of the total designated critical habitat in Unit 1. Lynx maintain large home ranges; therefore, forest management plans at large landscape scales will provide substantive recovery benefits to lynx.

The NRCS requires that lynx forest management plans must be based on the Service's ''Canada Lynx Habitat Management Guidelines for Maine'' (McCollough 2007, entire). These guidelines were developed from the best available science on lynx management for Maine and have been revised as new research results became available. The guidelines require maintenance of prescribed hare densities that have resulted in reproducing lynx populations in Maine. The guidelines are:

(1) Avoid upgrading or paving dirt or gravel roads traversing lynx habitat. Avoid construction of new high-speed/high-traffic-volume roads in lynx habitat. Desired outcome: Avoid fragmenting potential lynx habitat with high-traffic/high-speed roads.

(2) Maintain through time at least one lynx habitat unit of 35,000 ac (14,164 ha) (~1.5 townships) or more for every 200,000 ac (80,937 ha) (~9 townships) of ownership. At any time, about 20 percent of the area in a lynx habitat unit should be in the optimal mid-regeneration conditions (see Guideline 3). Desired outcome: Create a landscape that will maintain a continuous presence of a mosaic of successional stages, especially mid-regeneration patches that will support resident lynx.

(3) Employ silvicultural methods that will create regenerating conifer-dominated stands 12–35 ft (3.7–10.7 m) in height with high stem density (7,000–15,000 stems/ac; 2,800–6,000 stems/ha) and horizontal cover above the average snow depth that will support greater than 2.7 hares/ac (1.1 hares/ha). Desired outcome: Employ silvicultural techniques that create, maintain, or prolong use of stands by high populations of snowshoe hares.

(4) Maintain land in forest management. Development and associated activities should be consolidated to minimize direct and indirect impacts. Avoid development projects that occur across large areas, increase lynx mortality, fragment habitat, or result in barriers that affect lynx movements and dispersal. Desired outcome: Maintain the current amount and distribution of commercial forest land in northern Maine. Prevent forest fragmentation and barriers to movements. Avoid development that introduces new sources of lynx mortality.

(5) Encourage coarse woody debris for den sites by maintaining standing dead trees after harvest and leaving patches (at least .75 ac; .30 ha) of windthrow or insect damage. Desired outcome: Retain coarse woody debris for denning sites.

Notably, HFRP forest management plans must provide a net conservation benefit for lynx, which will be achieved by employing the lynx guidelines, identifying baseline habitat conditions, and meeting NRCS standards for forest plans. Plans must meet NRCS HFRP criteria and guidelines and comply with numerous environmental standards. NEPA compliance will be completed for each plan. The NRCS held public informational sessions about the HFRP and advertised the availability of funds. Plans must be reviewed and approved by the NRCS with assistance from the Service. The details of the plans are proprietary and will not be made public per NRCS policy.

Plans must be developed for a forest rotation (70 years) and include a decade-by-decade assessment of the location and anticipated condition of lynx habitat on the ownership. Some landowners are developing plans exclusively for lynx, and others are combining lynx management (umbrella species for young forest) with pine marten (umbrella species for mature forest) and other biodiversity objectives. Broad public benefits will derive from these plans, including benefits to many species of wildlife that share habitat with the lynx. Landowners are writing their own plans. The Nature Conservancy contracted with the University of Maine, Department of Wildlife Ecology to develop a lynx–pine marten plan that serves as a model for lynx/biodiversity forest planning and will be shared with other northern Maine landowners.

Landowners who are enrolled with the NRCS commit to a 10-year contract. Landowners must complete their lynx forest management plans within 2 years of enrollment. Currently, two plans are completed and two are in the final stage of editing. The majority (50 to 60 percent) of HFRP funds are withheld until plans are completed. By year 7, landowners must demonstrate on-the-ground implementation of their plan. The NRCS will monitor and enforce compliance with the 10-year contracts. At the conclusion of the 10-year cost-share contract, we anticipate that Safe Harbor Agreements or other agreements to provide regulatory assurances will be developed by all landowners as an incentive to continue implementing the plans.

We completed a programmatic biological opinion for the HFRP in 2006 that assesses the overall effects of the program on lynx habitat and on individual lynx and provides the required incidental take coverage. Separate biological opinions will be developed under this programmatic opinion for each of the four enrollees. These tiered opinions will document environmental baseline, net conservation benefits, and incidental take for each landowner. If additional HFRP funding is made available to Maine in the future, new enrollees will be tiered under this programmatic opinion. This programmatic opinion will be revised as new information is obtained, or if new rare, threatened, or endangered species are considered for HFRP funding.

Commitments to the HFRP are strengthened by several other conservation efforts. The Nature Conservancy land enrolled in the HFRP is also enrolled in the Forest Stewardship Council (FSC) forest certification program, which requires safeguards for threatened and endangered species. The Forest Society of Maine is under contract to manage a conservation easement held by the State of Maine on the Katahdin Forest Management lands, which is also enrolled in the HFRP. This easement requires that threatened and endangered species be protected and managed. The Forest Society of Maine also holds a conservation easement on the Merriweather LLC–West Branch property, which contains requirements that threatened and endangered species be protected and managed. These lands are also certified under the Sustainable Forestry Initiative and FSC, which require the inclusion of programs for threatened and endangered species. The Passamaquoddy enrolled lands are managed as trust lands by the Bureau of Indian Affairs, and projects occurring on those lands are subject to NEPA review and section 7 consultation.

In the final revised critical habitat designation, published in the **Federal Register** on February 25, 2009 (74 FR 8649–8652), we determined that the benefits of excluding lands managed in accordance with the Maine HFRP outweighed the benefits of including them in the designation, and that doing so would not result in extinction of the species. We affirm that determination based on the analysis below.

Benefits of Inclusion

The primary benefit of including an area within a critical habitat designation

is the protection provided by section 7(a)(2) of the Act, which directs Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species and do not result in the destruction or adverse modification of critical habitat. Consultation has already occurred on these lands, and it included consideration of lynx habitat. The regulatory benefit of designating critical habitat on the HFRP lands would be minimal because few Federal actions would trigger the consultation provisions under section 7(a)(2) of the Act. Forestry activities are exempt from the Clean Water Act, and few landowners in Maine obtain Federal funding for projects on their lands. Since the lynx was listed in 2000, few formal consultations on lynx have occurred in Maine; however, no consultations have taken place regarding Federal actions on lands owned by The Nature Conservancy, West Branch Project, Elliotsville Plantation, Inc., and Katahdin Forest Management lands. The Passamaquoddy Tribe, through the Bureau of Indian Affairs, has informally consulted with the Service on several timber sales during this time period, resulting in determinations that the projects were not likely to adversely affect lynx because the harvests would create early successional habitat beneficial to lynx. Consultations in northern Maine have been mostly on small Federal actions (less than 15 ac; 6 ha) that have few consequences to lynx, which require large landscapes of 35,000 ac (14,164 ha) or more; therefore, the results of these informal consultations were that the projects would have no effect on lynx or would not likely adversely affect lynx.

A potential benefit of critical habitat designation would be to signal the importance of these lands to Federal agencies, scientific organizations, State and local governments, and the public to encourage conservation efforts to benefit the lynx and its habitat. By publication of the proposed rule and this final rule, we are educating the public of the location of core lynx habitat and areas most important for the conservation and recovery of the lynx DPS. In addition, designation of critical habitat on HFRP enrollee lands could provide some educational benefit through the rulemaking process.

Benefits of Exclusion

A Federal nexus on HFRP lands is rare, and development is unlikely because conservation easements exist on many of these lands. Section 7(a)(2) review will not provide benefits to the physical and biological features essential to the conservation of lynx, because most Federal projects in northern Maine are small and will not benefit habitat at a geographic scale meaningful for lynx conservation. Therefore, the regulatory protection provided through the section 7(a)(2) process for critical habitat would likely be minimal. The HFRP goes beyond the standard of adverse modification to provide a net conservation benefit for lynx. The conservation measures for lynx included in the HFRP plans are affirmative obligations that address the physical and biological features, represent the best available science, and provide a net conservation benefit to the species by ensuring the quality and quantity of unfragmented lynx habitat on the landscape.

Excluding HFRP lands from critical habitat designation would help strengthen partnerships and promote other aspects of recovery for the lynx. Since the lynx was listed in 2000, it has been difficult for us to effectively address lynx conservation across the forest landscape in northern Maine because of the numerous private industrial forest landowners with whom coordination is required. Participation in the HFRP will contribute to the conservation of the physical and biological features essential to lynx conservation in an area representing about 9.3 percent of the designated critical habitat unit. Proactively developing conservation programs for lynx across large ownerships can be a more effective recovery strategy than project-by-project planning in a landscape where consultation under section 7 is rarely applicable. Lynx require large home ranges, and lynx and snowshoe hare habitat occurs in a habitat mosaic across the landscape that changes with time and space as forests age or disturbances occur (e.g., insect outbreaks or timber management). The HFRP plans address landscape-level planning and actions for forestry-related activities within the context of lynx-specific guidelines, which can facilitate lynx recovery. The HFRP contracts operate under a programmatic biological opinion under section 7(a)(2), enabling a coordinated, multi-landowner approach to lynx conservation on private lands.

Contracts committing enrollees to implement the HFRP build on the ongoing partnership between the Service, the NRCS, the Maine Department of Inland Fisheries and Wildlife, and the HFRP enrollees. The contracts provide assurances to the Service that individual landowners will address the habitat requirements of lynx and facilitate the consideration and implementation of lynx conservation needs at a broad landscape scale. Although the HFRP contracts are for 10 years, lynx plans are required to address forest management for the next 70 years. Several incentives encourage enrollees to continue their plans after the conclusion of the 10-year contract:

(1) Enrollees will be offered Safe Harbor Agreements or other mechanisms to extend incidental take coverage and regulatory assurances beyond the 10-year period. Most of the enrollees are in forest certification programs and have conservation easements.

(2) HFRP plans meet the requirements of certification programs and easement requirements to document how they will manage for federally listed species.

(3) Future HFRP funding may be available to promote continued management on these lands.

(4) Landowners may be reimbursed at a graduated rate of up to 100 percent for land put under conservation easements of 30-year and 99-year duration.

Most HFRP enrollees have a long track record of conservation in Maine. The Nature Conservancy has been working with the Service and other conservation partners since the 1970s. The Forest Society of Maine is a conservation easement holder in northern Maine, and has been working with the Service since the late 1990s. We have a long partnership with the Passamaquoddy Tribe that includes consulting on Tribal silvicultural projects, cooperative research, review of forest management plans, and implementation of Service conservation recommendations. Many of the HFRP enrollees contribute as members to the University of Maine Cooperative Forest Research Unit (CFRU). The CFRU has funded numerous lynx and snowshoe hare studies that have advanced our understanding of lynx population dynamics and habitat relationships. Landowners have facilitated research and surveys by allowing access to their lands and logistical support. The positive experiences from HFRP enrollment will promote continued support for funding and continued lynx research.

Some of the enrolled lands could be sold, and it may be argued that new owners may not participate in long-term lynx management. However, new landowners could benefit from the incidental take coverage offered by HFRP or future Safe Harbor Agreements as a result of HFRP plans. Lands under conservation easements would require planning for Federally listed species,

and new landowners would have an incentive to continue to implement plans to meet their easement requirements. Many of the owners have SFI or FSC certifications, which have similar requirements for State and Federally listed species planning. Therefore, substantial incentives exist for a new landowner to honor existing lynx management plans.

Some landowners do not trust that the regulatory effect of critical habitat designation is limited, and they do not want an additional layer of Federal regulation on their private property. They are concerned that additional State regulations or local restrictions may be imposed as a result of the designation of critical habitat. Enrollees in the HFRP are some of the largest landowners in Maine. The cooperation and partnership of these landowners is needed to achieve recovery of lynx in Maine. If designation causes their alienation, it would be counterproductive to designate on their lands.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We have determined that there would be minimal benefit in designating lands enrolled in the HFRP as critical habitat for the lynx DPS within Unit 1. We evaluated the exclusion of approximately 943.2 mi² (2,443 km²) of lands enrolled in the HFRP and determined that inclusion of these lands would result in few benefits; minimal consultation under section 7, and minimal education related to lynx conservation would be realized.

The HFRP lynx management plans will be effective and directly address all of the physical and biological features essential to lynx by incorporating the Service's lynx conservation guidelines. These conservation actions and management for the lynx and the physical and biological features essential to it within large landscapes exceed any conservation value provided as a result of regulatory protections that have been or may be afforded through critical habitat designation. The exclusion of these lands from critical habitat will help preserve partnerships developed with the landowners. Most of the HFRP enrollees have a demonstrated track record of working with the Service and helping to fund lynx research. The HFRP plans will have a high probability of implementation due to the 10-year contract with NRCS and significant incentives (e.g., Safe Harbor, requirements of forest certification and conservation easements, continued funding and possibly additional funds), and could continue for a 70-year period. Funding is assured because development of lynx forest management plans and initial implementation is being paid for by NRCS. The HFRP plans provide a high degree of public benefit for lynx and other wildlife that share their habitat.

The benefits of excluding HFRP lands from critical habitat outweigh the benefits of retaining these lands as critical habitat. Educational benefits can be realized by critical habitat designation, which informs the public via the rulemaking process. However, education has already been realized through the HFRP. The best scientific information regarding the long-term conservation of lynx is being used and shared with landowners to assist in the development of their plans. We participate in the delivery of this information. We will continue to review Federal actions under Section 7(a)(2) of the Act, although the only likely Federal action we foresee on the lands enrolled in HFRP will be on the consultation required for development of the individual plans. A programmatic biological opinion has already been prepared, and it addresses lynx habitat in detail.

The HFRP provides an opportunity for us to work in partnership with landowners across several landscape scales and ownerships. The HFRP demonstrates that our lynx management guidelines are a flexible, outcome-based approach to addressing lynx recovery in northern Maine that can be adapted to a variety of landowner types and landscapes. The HFRP lynx forest management plans will employ state-of-the-art habitat mapping, apply the best available science, and have a high likelihood of being carried out. We believe that the benefits of excluding lands managed in accordance with the HFRP outweigh the benefits of inclusion, particularly because these landowners have committed to developing long-term lynx habitat plans and on-the-ground management affecting large landscapes. Therefore, in this final rule, we have not designated critical habitat for the lynx DPS on HFRP-enrolled lands.

Exclusion Will Not Result in Extinction of the Species

Exclusion of 943.2 mi² (2,443 km²) from Unit 1 of this final revised critical habitat designation will not result in the extinction of the species, because the HFRP plans provide for the conservation of the species and the physical and biological features essential to it. The jeopardy standard of section 7(a)(2) of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the species will not go extinct. The protections afforded the lynx under the jeopardy standard will remain in place for the areas excluded from revised critical habitat. We, therefore, exclude lands managed in accordance with the HFRP from Unit 1 of this final revised designation of critical habitat for the lynx DPS.

State of Washington Department of Natural Resources Lynx Habitat Management Plan for DNR-Managed Lands (WDNR LHMP)

The WDNR LHMP encompasses 197 mi² (510 km²) of WDNR-managed lands distributed throughout north-central and northeastern Washington in areas delineated as Lynx Management Zones in the Washington State Lynx Recovery Plan (Stinson 2001, p. 39; Washington DNR 2006, pp. 5–13). Of the area covered by the plan, 164.2 mi² (425 km²) overlaps the area designated as critical habitat. The WDNR LHMP was finalized in 2006, and is a revision of the lynx plan that WDNR had been implementing since 1996. The 1996 plan was developed as a substitute for a species-specific critical habitat designation required by Washington Forest Practices rules in response to the lynx being State-listed as threatened (Washington DNR 2006, p. 5). The 2006 WDNR LHMP provided further provisions to avoid the incidental take of lynx (Washington DNR 2006, p. 6). WDNR is committed to following the LHMP until 2076, or until the lynx is delisted (Washington DNR 2006, p. 6). WDNR requested that lands subject to the plan be excluded from critical habitat.

The WDNR LHMP contains measures to guide WDNR in creating and preserving quality lynx habitat through its forest management activities. The objectives and strategies of the LHMP are developed for multiple planning scales (ecoprovince and ecodivision, Lynx Management Zone, Lynx Analysis Unit (LAU), and ecological community), and include:

(1) Encouraging genetic integrity at the species level by preventing bottlenecks between British Columbia and Washington by limiting size and shape of temporary non-habitat along the border and maintaining major routes of dispersal between British Columbia and Washington;

(2) Maintaining connectivity between subpopulations by maintaining dispersal routes between and within zones and arranging timber harvest activities that result in temporary non-habitat patches among watersheds so

that connectivity is maintained within each zone;

(3) Maintaining the integrity of requisite habitat types within individual home ranges by maintaining connectivity between and integrity within home ranges used by individuals and/or family groups; and

(4) Providing a diversity of successional stages within each LAU and connecting denning sites and foraging sites with forested cover without isolating them with open areas by prolonging the persistence of snowshoe hare habitat and retaining coarse woody debris for denning sites (Washington DNR 2006, p. 29).

The LHMP identifies specific guidelines to achieve the objectives and strategies at each scale; it also describes how WDNR will monitor and evaluate the implementation and effectiveness of the LHMP (Washington DNR 2006, pp. 29–63). WDNR has been managing for lynx for almost two decades, and the Service has concluded that the management strategies implemented are effective.

In the final revised critical habitat designation, published in the **Federal Register** on February 25, 2009 (74 FR 8657–8658), we determined that the benefits of excluding lands managed in accordance with the WDNR LHMP outweighed the benefits of including them in the designation, and that doing so would not result in extinction of the species. We reaffirm that determination based on the analysis below.

Benefits of Inclusion

On WDNR State lands, it is uncommon for an action with a Federal nexus that triggers consultation under section 7 of the Act to occur; therefore, little benefit would be realized through section 7 consultation if these lands were included in the designation. Some educational benefits to designating critical habitat for lynx on WDNR-managed lands may exist. However, we believe there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed both under the Act and Washington State law; through the public review process for the WDNR LHMP, Washington's Lynx Recovery Plan, and the revision of the Okanogan-Wenatchee National Forest Management Plan; lynx and snowshoe hare research being conducted by the USFS Pacific Northwest Research Station, Washington State University, University of Washington, and the University of Montana; surveys being conducted by Washington Department of Fish and Wildlife and the USFS; and State of Washington Web sites (e.g., *http://wdfw.wa.gov/wlm/diversty/soc/recovery/lynx/lynx.htm, www.dnr.wa.gov/htdocs/amp/sepa/lynx/1_toc.pdf*).

Benefits of Exclusion

The WDNR LHMP has provided substantial protection of features essential to the conservation of lynx on WDNR lands, and has provided a greater level of management for the lynx on these State lands than would be achieved with the designation of critical habitat. Because the LHMP provides lynx-specific objectives and strategies for different planning scales, guidelines to meet the objectives, and monitoring to evaluate implementation and effectiveness, the measures contained in the WDNR LHMP exceed any measures that might result from critical habitat designation. As a result, we do not anticipate any actions on these lands that would destroy or adversely modify habitats essential to the conservation of the lynx DPS. The exclusion of WDNR lands from critical habitat would help preserve the partnerships that we have developed with the State of Washington through development and implementation of the 2006 LHMP and the original 1996 lynx plan, both of which provide for long-term lynx conservation.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We evaluated the exclusion of approximately 164.2 mi² (425 km²) of lands managed by the WDNR. Including WDNR lands managed in accordance with the LHMP in the final designation would likely not lead to any changes in WDNR management (to further avoid destroying or adversely modifying that habitat), and, therefore, the benefits of inclusion are low. We find that few additional conservation benefits would be realized through section 7 of the Act, because actions on these State lands rarely have a Federal nexus. The habitat conservation measures addressing the features essential to conservation of the lynx are already being implemented on WDNR lands under the WDNR LHMP, have a proven record of effectiveness, will be in place until at least 2076, and are providing for physical and biological features essential to the conservation of the species.

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we find that greater benefits to lynx will be achieved by excluding these WDNR lands from the final designation than would be achieved by including them. Therefore, in this final rule, we have not designated critical habitat for the lynx DPS on lands managed in accordance with the WDNR LHMP.

Exclusion Will Not Result in Extinction of the Species

We have determined that the exclusion of lands managed in accordance with the WDNR LHMP from Unit 4 of this final revised critical habitat designation for the lynx DPS will not result in the extinction of the species because the WDNR plan provides for the conservation of the species and the physical and biological features essential to it. The jeopardy standard of section 7(a)(2) of the Act and routine implementation of conservation measures through the section 7 process also provide assurances that the subspecies will not go extinct. The protections afforded to the lynx under the jeopardy standard will remain in place for the areas excluded from revised critical habitat. We, therefore, exclude 164.2 mi² (425 km²) of lands managed in accordance with the WDNR LHMP from Unit 4 of this final revised lynx critical habitat designation.

Montana Department of Natural Resources and Conservation Forested Trust Lands Habitat Conservation Plan (MDNRC HCP)

The Montana Department of Natural Resources and Conservation (MDNRC) Forested Trust Lands Habitat Conservation Plan (HCP; Montana Department of Natural Resources and Conservation and U.S. Fish and Wildlife Service 2010a, entire; 2010b, entire; 2010c, entire) was permitted in 2011 under section 10(a)(1)(B) of the Act for a period of 50 years (U.S. Fish and Wildlife Service 2011a, entire; 2011b, entire). The HCP covers about 857 mi² (2,220 km²) of forested State trust lands in western Montana. The HCP trust lands occur on both blocked and scattered parcels within three MDNRC land offices, the Northwestern, Central, and Southwestern Land Offices. Blocked lands are primarily three State Forests: Stillwater, Coal Creek, and Swan. Scattered parcels refer to all other HCP project lands outside of blocked lands. About 271.4 mi² (703 km²) of lands managed in accordance with the HCP overlap the designated lynx critical habitat in Unit 3, and about 1.3 mi² (3.3 km²) of HCP-managed lands overlap critical habitat in Unit 5. Of this total, about 73 percent (200 mi² (518 km²)) occurs in high-priority areas for lynx conservation known as Lynx Management Areas (LMAs), with the remainder in scattered blocks (Montana Department of Natural Resources and Conservation and U.S. Fish and Wildlife

Service 2010a, p. 4–365; 2010b, pp. 2-45–2-61; 2010c, p. D–67; U.S. Fish and Wildlife Service 2011a, pp. III-42–III-45).

The HCP covers activities that are primarily associated with commercial forest management, but includes grazing on forested trust lands. In addition to lynx, the HCP also covers grizzly bears (*Ursus arctos horribilis*) and bull trout (*Salvelinus confluentus*), both listed as threatened under the Act, and two non-listed fish species, the westslope cutthroat trout (*Oncorhynchus clarkii lewisi*) and the Interior (Columbia River) redband trout (*Oncorhynchus mykiss gairdneri*).

The HCP includes a Lynx Conservation Strategy (Montana Department of Natural Resources and Conservation and U.S. Fish and Wildlife Service 2010b, pp. 2-45–2-61) consisting of a suite of lynx habitat commitments that apply to all lands in the HCP project area supporting lynx habitat and additional commitments that apply to LMAs. The HCP was finalized in 2011, and MDNRC has been implementing the HCP Lynx Conservation Strategy since the first year of implementation in 2012 (Montana Department of Natural Resources and Conservation 2013a, 2013b, 2013c, entire; 2014a, 2014b, entire). The Lynx Conservation Strategy incorporates many of the existing Administration Rules of Montana (ARMs) for forest management activities, and it describes the additional HCP commitments based on recent information and research. The Lynx Conservation Strategy minimizes impacts of forest management activities on lynx and lynx critical habitat associated with the HCP, while allowing MDNRC to meet its fiduciary and stewardship trust responsibilities. MDNRC requested that lands subject to the HCP be excluded from critical habitat.

The goal of the Lynx Conservation Strategy is to support Federal lynx conservation efforts by managing for habitat elements important to lynx and their prey that contribute to the landscape-scale occurrence of lynx. HCP commitments in the strategy are associated with two types of habitat areas: (1) lynx habitat on lands within the HCP, and (2) lynx habitat on specific LMA subunits of HCP lands where resident lynx are known to occur or likely to occupy the area periodically. The HCP includes specific objectives to achieve this goal:

(1) Minimize potential for disturbance to known den sites;

(2) Map potential lynx winter foraging, summer foraging, and temporarily non-suitable habitats;

(3) Retain coarse woody debris and other denning attributes;

(4) Limit conversion of suitable lynx habitat to temporarily nonsuitable habitat per decade in LMAs;

(5) Ensure adequate amounts of foraging habitat are maintained in LMAs;

(6) Provide for habitat connectivity where vegetation and ownership patterns allow; and

(7) Maintain suitable lynx habitat on MDNRC scattered parcels outside LMAs (Montana Department of Natural Resources and Conservation and U.S. Fish and Wildlife Service 2010b, pp. 2-45–2-61).

The Lynx Conservation Strategy through the HCP places additional conservation emphasis on geographic areas most likely to remain high-priority areas to promote lynx conservation into the future (Montana Department of Natural Resources and Conservation and U.S. Fish and Wildlife Service 2010b, p. 2-53). These HCP lands occur in primary lynx habitat types, and are thus likely to provide snow depths and vegetation species compositions necessary to provide preferred winter foraging conditions, as well as ensure that the HCP helps support Federal efforts to provide adequate amounts of suitable lynx habitat. It also describes how MDNRC will monitor and evaluate the implementation and effectiveness of the HCP (Montana Department of Natural Resources and Conservation and U.S. Fish and Wildlife Service 2010b, pp. 4-27–4-37). Prior to the HCP, MDNRC had been managing diligently for lynx for over a decade under existing ARMs. The HCP and the ARMS combined will ensure that habitat features important for conservation of lynx will occur on MDNRC's HCP-managed lands in the long term.

Benefits of Inclusion

On MDNRC HCP State lands, it is relatively infrequent for an action with a Federal nexus that triggers consultation under section 7 of the Act to occur; therefore, little benefit would be realized through section 7 consultation if these lands were included in the critical habitat designation. Some educational benefits of designating critical habitat for lynx on MDNRC HCP managed lands may exist. However, we believe there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed under the Act and addressed by Montana State law; through the public review process for the MDNRC HCP; MDNRC's forest management consistency with the Lynx recovery outline (U.S. Fish and Wildlife Service 2005, entire); the HCP support of Montana Department of Fish, Wildlife, and Parks' (MFWP) lynx strategy set forth in its Comprehensive Fish and Wildlife Conservation Strategy (Montana Department of Fish, Wildlife, and Parks 2005, pp. 400–402); lynx and snowshoe hare research being conducted by the USFS Rocky Mountain Research Station and the University of Montana; surveys being conducted by MFWP and the USFS; and State of Montana Web sites (e.g., *http://fwp.mt.gov/fishandwildlife/species/threatened/canadaLynx/default.html*, *http://dnrc.mt.gov/HCP/Species.asp*).

Benefits of Exclusion

The MDNRC HCP provides substantial protection of features essential to the conservation of lynx on HCP-managed lands and provides a greater level of management for the lynx on these State lands than would be achieved with designation of critical habitat. Because the HCP provides lynx-specific objectives and strategies for different geographic locations, guidelines to meet the objectives, and monitoring to evaluate implementation and effectiveness, the measures contained in the HCP exceed any measures that might result from critical habitat designation. As a result, we do not anticipate any actions on these lands that would reduce the landscape-scale availability of important lynx and hare habitats or otherwise diminish the conservation value of these lands to the lynx DPS.

The exclusion of MDNRC HCP-managed lands from critical habitat would help preserve the partnerships that have developed between the Service and the State through development and implementation of the HCP, the existing ARMs, the Comprehensive Fish and Wildlife Conservation Strategy, and the intent of the State Forest Land Management Plan, all of which provide for long-term lynx conservation. Requiring additional redundant processes of permit applicants/holders who have already undergone an extensive Federal process to apply for a permit also appreciably undermines the benefit of HCPs for cooperators and reduces the certainty otherwise provided by a single clear plan.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We have evaluated the exclusion of approximately 272.7 mi^2 (706 km^2) of lands managed by the MDNRC in accordance with the HCP. We have

determined that it is unlikely that including these HCP-managed areas in the final designation would lead to any changes in MDNRC management (i.e., no additional conservation measures would be recommended to further avoid impacts to lynx and hare habitats); therefore, the benefits of inclusion are low.

We find that few (if any) additional conservation benefits would be realized through section 7 of the Act, because activities with a Federal nexus are infrequent on these State lands. Additionally, the habitat conservation measures addressing the features essential to conservation of the lynx are already being implemented on MDNRC lands under the MDNRC HCP, have been demonstrated to be effective, will be in place until at least 2061, and are providing for the maintenance and protection of the physical and biological features essential to the conservation of the lynx DPS.

We have, therefore, determined that the benefits of excluding lands managed in accordance with the MDNRC HCP in Unit 3 and Unit 5 outweigh the benefits of including these lands as critical habitat. Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we find that greater benefits to lynx are likely to be achieved by excluding MDNRC HCP lands from the final designation than by including them.

Exclusion Will Not Result in Extinction of the Species

The MDNRC HCP (1) provides biologically meaningful and quantifiable measures for the long-term conservation of the lynx and the physical and biological features essential to it, (2) includes long-term certainty of implementation, (3) employs rigorous monitoring and reporting requirements, and (4) applies an adaptive management approach. Therefore, it is our determination that the exclusion of MDNRC HCP lands from critical habitat will not result in the extinction of the DPS. We, therefore, exclude 271.4 mi^2 (703 km^2) of lands managed in accordance with the MDNRC HCP from Unit 3, and 1.3 mi^2 (3.3 km^2) from Unit 5 of this final revised lynx critical habitat designation.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. Our economic analyses of the proposed and final rules found that none of these criteria are relevant to this analysis, and it did not identify any potentially significant effects of lynx critical habitat designation on energy supply, distribution, or use. Thus, based on information in the economic analysis, significant energy-related impacts associated with lynx 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 FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations; 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 largely by the Federal Government not by any other organizations that could be considered small governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the lynx DPS in a takings implications assessment. We conducted an economic analysis which determined that (1) the designation of revised critical habitat for the lynx is unlikely to generate costs exceeding $100 million in a single year, (2) the economic costs of implementing the rule through section 7 of the Act will most likely be limited to the additional administrative effort required to consider adverse modification, and (3) the revised designation is not expected to trigger additional requirements under State or local regulations. We also completed a Takings Implication Assessment (TIA) in which we determined that revising the designation of critical habitat for the lynx would not deny anyone economically viable use of their property or result in a direct and immediate interference with property nor in physical occupation of anyone's property. We have concluded, therefore, that this designation is not likely to result in either a regulatory or a physical taking in accordance with the Fifth Amendment of the Constitution. Based on the best available information, the TIA concludes that this designation of critical habitat for the lynx does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of the proposed critical habitat designation with, appropriate State resource agencies in Idaho, Maine, Minnesota, Montana, Washington, and Wyoming. We received comments from Idaho (Office of Species Conservation, Department of Fish and Game, and Department of Lands); Maine (Department of Inland Fisheries and Wildlife); Montana (Department of Natural Resources and Conservation); New Mexico (Department of Agriculture and Department of Game and Fish); Washington (Department of Natural Resources); and Wyoming (Office of the Governor, Legislature's Select Committee on Federal Natural Resource Management, and Game and Fish Department), Fremont, Lincoln, Park,

and Sublette Counties Boards of County Commissioners and Shoshone Cooperating Agency Coalition; and the Coalition of Local Governments representing the County Commissions and Conservation Districts for Lincoln, Sweetwater, Uinta, and Sublette Counties) and have addressed them in the Summary of Comments and Recommendations section of the rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) 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 lynx DPS. 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 lynx, 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 the draft environmental assessment was made available for public comment on June 20, 2014 (79 FR 35303). The final environmental assessment and FONSI has been completed and is available for review with the publication of this final rule. You may obtain a copy of the final environmental assessment and FONSI online at *http://www.regulations.gov*, by mail from the Montana Ecological Services Field Office (see **ADDRESSES**), or by visiting our Web site at *http://www.fws.gov/montanafieldoffice/*.

In our environmental assessment, we concluded that designation of critical habitat would not have any direct effects on the environment, except through the section 7 consultation process. This is because critical habitat designation does not impose broad rules or restrictions on land use, nor does it automatically prohibit any land use activity. We also concluded that, although designation could alter or result in restrictions on some activities, mostly on Federal lands, it is not likely to result in substantial impacts to the physical or human environment. Our analysis did not identify any adverse effects unique to minority or low-income human populations in the affected areas nor the potential to cause irreversible or irretrievable environmental impacts, directly, indirectly, or cumulatively.

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.

Tribal lands in Maine, Minnesota, and Montana fall within the boundaries of this final designation in the Maine (Unit 1), Minnesota (Unit 2), and Northern Rocky Mountains (Unit 3) critical habitat units. Tribal lands that fall within the designation include those of the Passamaquoddy Tribe and the Penobscot Indian Nation in Maine, the Grand Portage Indian Reservation and Bois Forte Indian Reservation–Vermillion Lake District in Minnesota, and the Confederated Salish and Kootenai Tribes, Flathead Indian Reservation in Montana.

During development of the 2009 final rule, we contacted and met with a number of Tribes to discuss the proposed designation, and we also received comments from numerous Tribes requesting that their lands not be designated as critical habitat because of

their sovereign rights, in addition to concerns about economic impacts and the effect on their ability to manage natural resources. During development of the 2013 proposed rule and this final rule, we also contacted the Tribes whose lands were within the proposed revised designation, and they confirmed their continued preference that Tribal lands not be designated as lynx critical habitat. As described above (see *Application of Section 4(b)(2) of the Act*—Exclusions Based on Other Relevant Impacts), we determined in the 2009 final rule and reaffirm in this rule that the benefits of excluding these Tribal lands from the final lynx critical habitat designation outweigh the benefits of including them, and that doing so will not result in extinction of the lynx DPS. Therefore, we are not designating critical habitat for the lynx on Tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov*, *http://www.fws.gov/mountain-prairie/species/mammals/lynx/index.htm*, and upon request from the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Montana Fish and Wildlife Office, the Maine Fish and Wildlife Office, and the New England 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; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Lynx, Canada'' 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							
*	*	*	*	*	*	*	
Lynx, Canada	*Lynx canadensis*	U.S.A. (AK, CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY), Canada, circumboreal.	Where found within contiguous U.S.A.	T	692	17.95(a)	17.40(k)
*	*	*	*	*	*	*	

■ 3. In § 17.95, amend paragraph (a) by revising the entry for ''Canada Lynx *(Lynx canadensis)''* to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Canada Lynx *(Lynx canadensis)*

(1) Critical habitat units are depicted on the maps below for the following States and counties:

(i) Idaho: Boundary County;

(ii) Maine: Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties;

(iii) Minnesota: Cook, Koochiching, Lake, and St. Louis Counties;

(iv) Montana: Carbon, Flathead, Gallatin, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Park, Pondera, Powell, Stillwater, Sweetgrass, and Teton Counties;

(v) Washington: Chelan and Okanogan Counties; and

(vi) Wyoming: Fremont, Lincoln, Park, Sublette, and Teton Counties.

(2) Within these areas the primary constituent element for the Canada lynx is boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

(i) Presence of snowshoe hares and their preferred habitat conditions, which include dense understories of young trees, shrubs or overhanging boughs that protrude above the snow, and mature multistoried stands with conifer boughs touching the snow surface;

(ii) Winter conditions that provide and maintain deep fluffy snow for extended periods of time;

(iii) Sites for denning that have abundant coarse woody debris, such as downed trees and root wads; and

(iv) Matrix habitat (e.g., hardwood forest, dry forest, non-forest, or other habitat types that do not support snowshoe hares) that occurs between patches of boreal forest in close juxtaposition (at the scale of a lynx home range) such that lynx are likely to travel through such habitat while accessing patches of boreal forest within a home range.

(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 October 14, 2014.

(4) *Critical habitat map units.* Data layers defining map units were created using a USA Contiguous Albers Equal Area Conic projection. The maps in this entry establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, *http://www.fws.gov/montanafieldoffice/*, at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2013–0101, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

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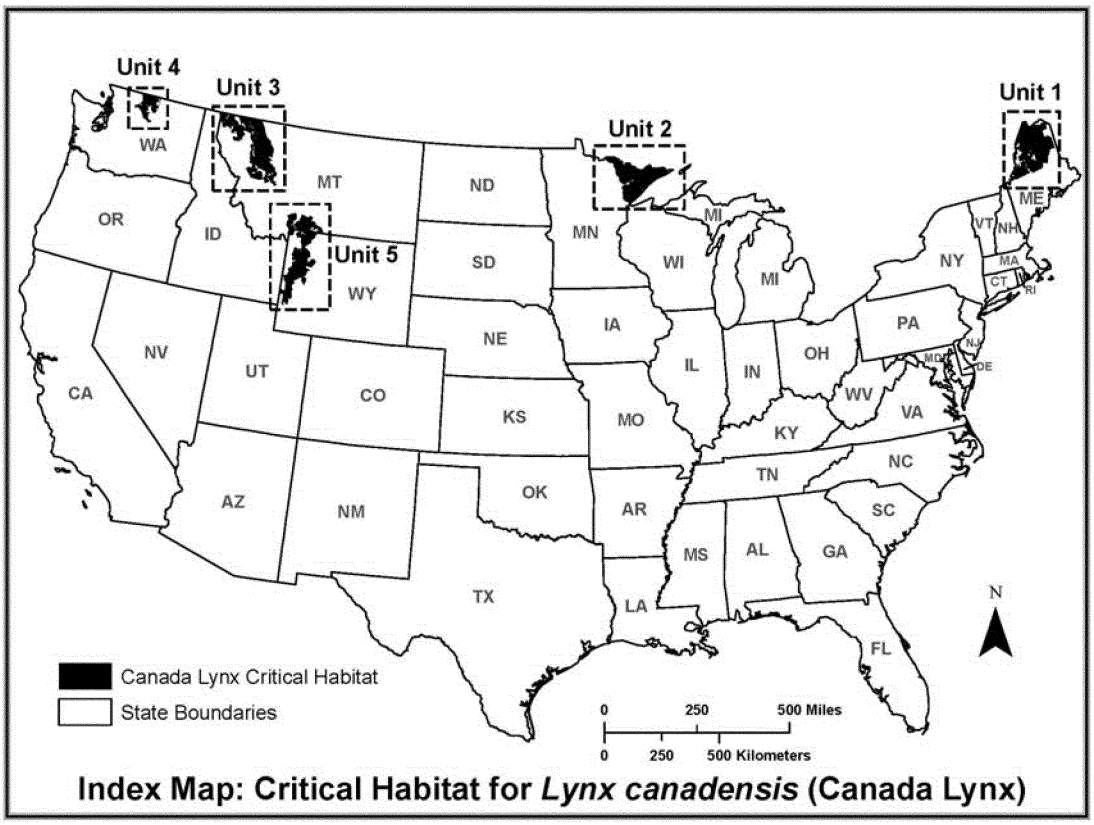
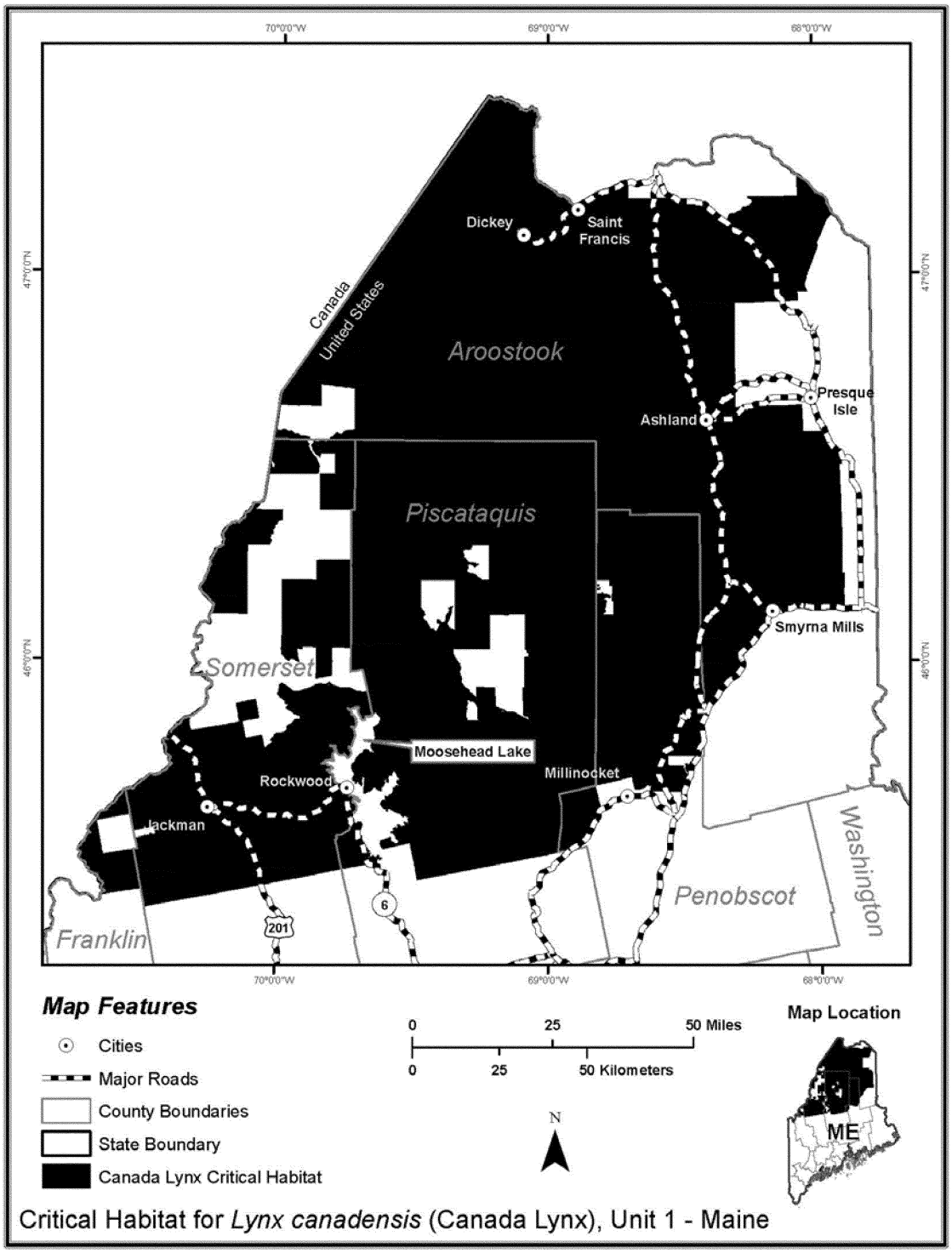


Index Map: Critical Habitat for *Lynx canadensis* (Canada Lynx)

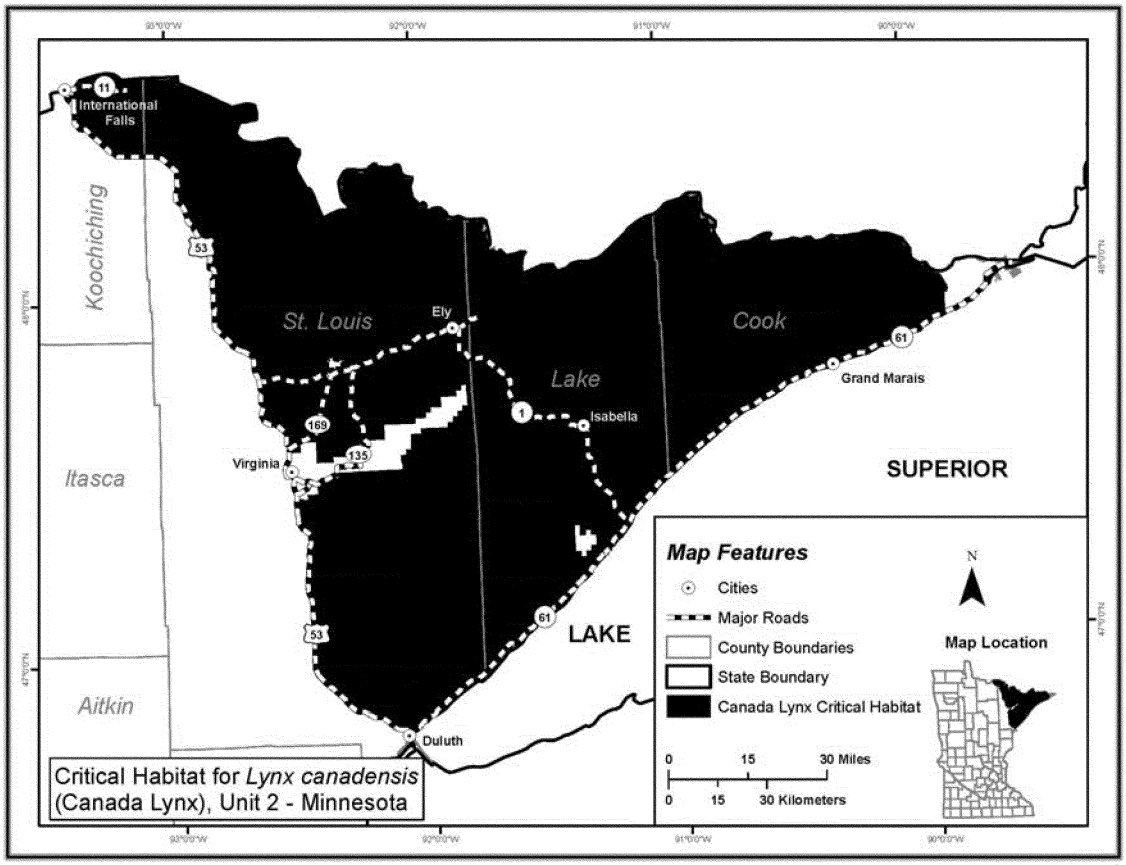
(6) Unit 1: Maine—Aroostook, Franklin, Penobscot, Piscataquis, and Somerset Counties, ME. Map of Unit 1, Maine, follows:



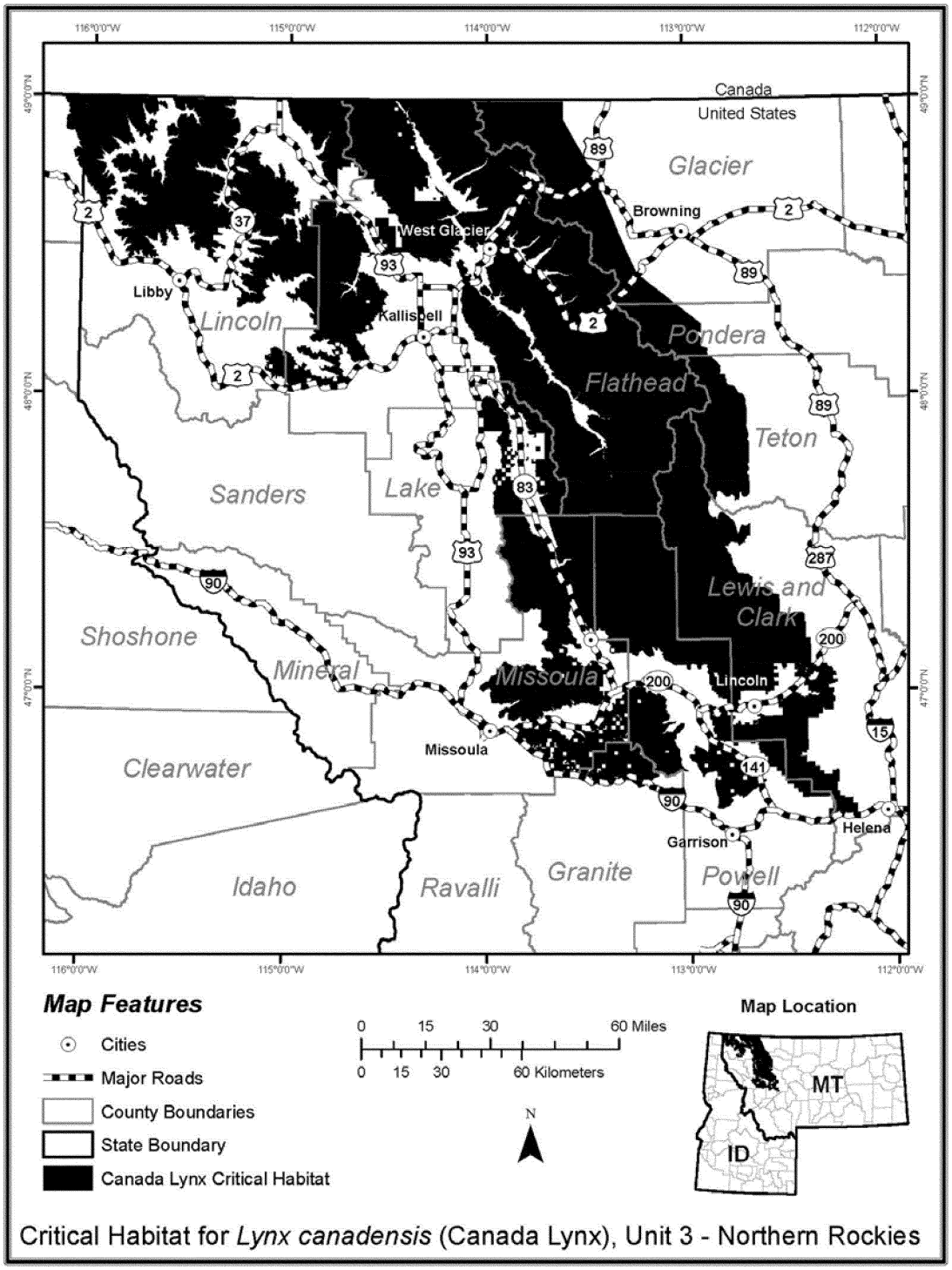
Critical Habitat for *Lynx canadensis* (Canada Lynx), Unit 1 - Maine

(7) Unit 2: Minnesota—Cook, Koochiching, Lake, and St. Louis Counties, MN.

Map of Unit 2, Minnesota, follows:

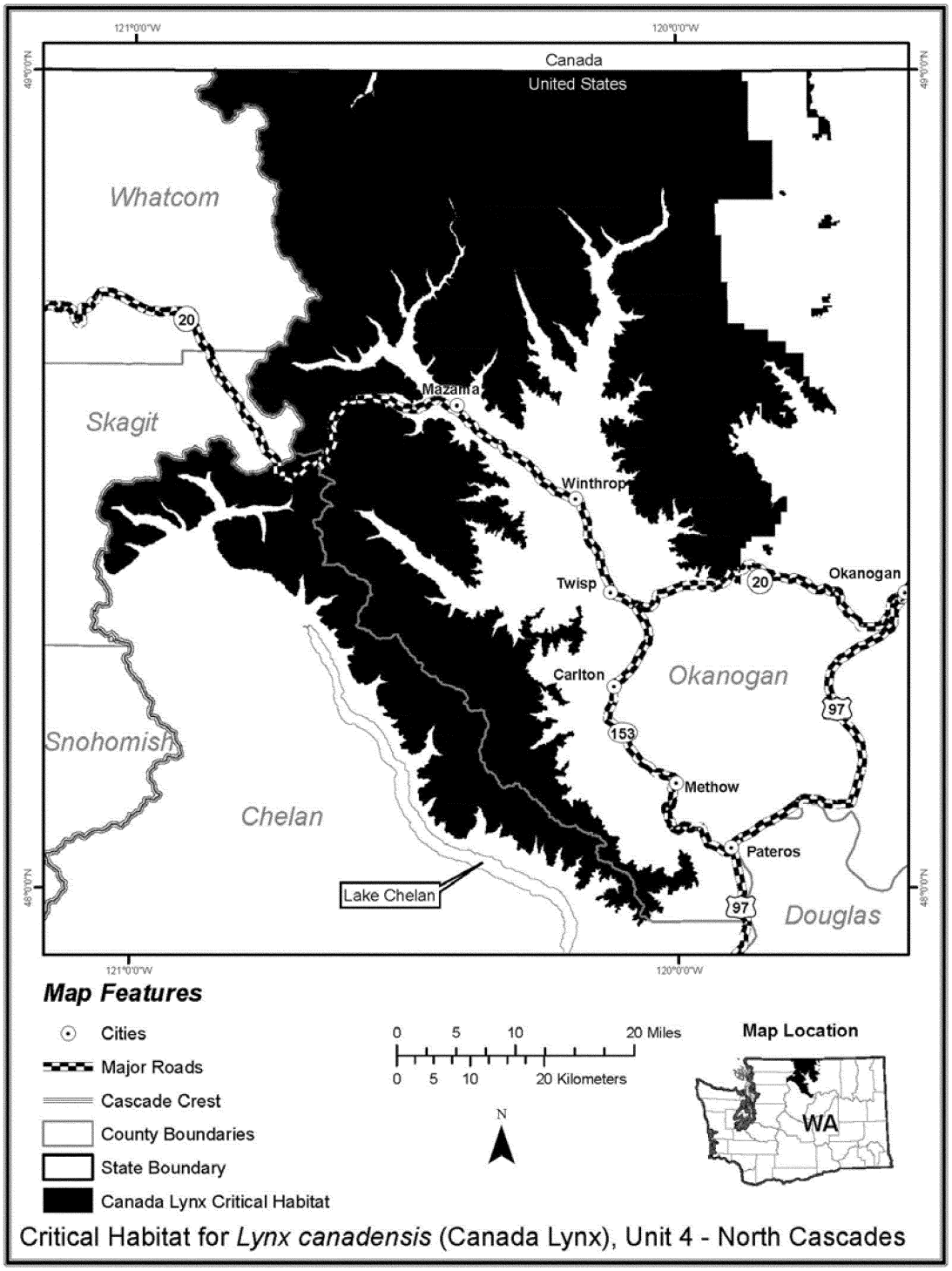


(8) Unit 3: Northern Rockies—Boundary County, ID, and Flathead, Glacier, Granite, Lake, Lewis and Clark, Lincoln, Missoula, Pondera, Powell and Teton Counties, MT. Map of Unit 3, Northern Rockies, follows:



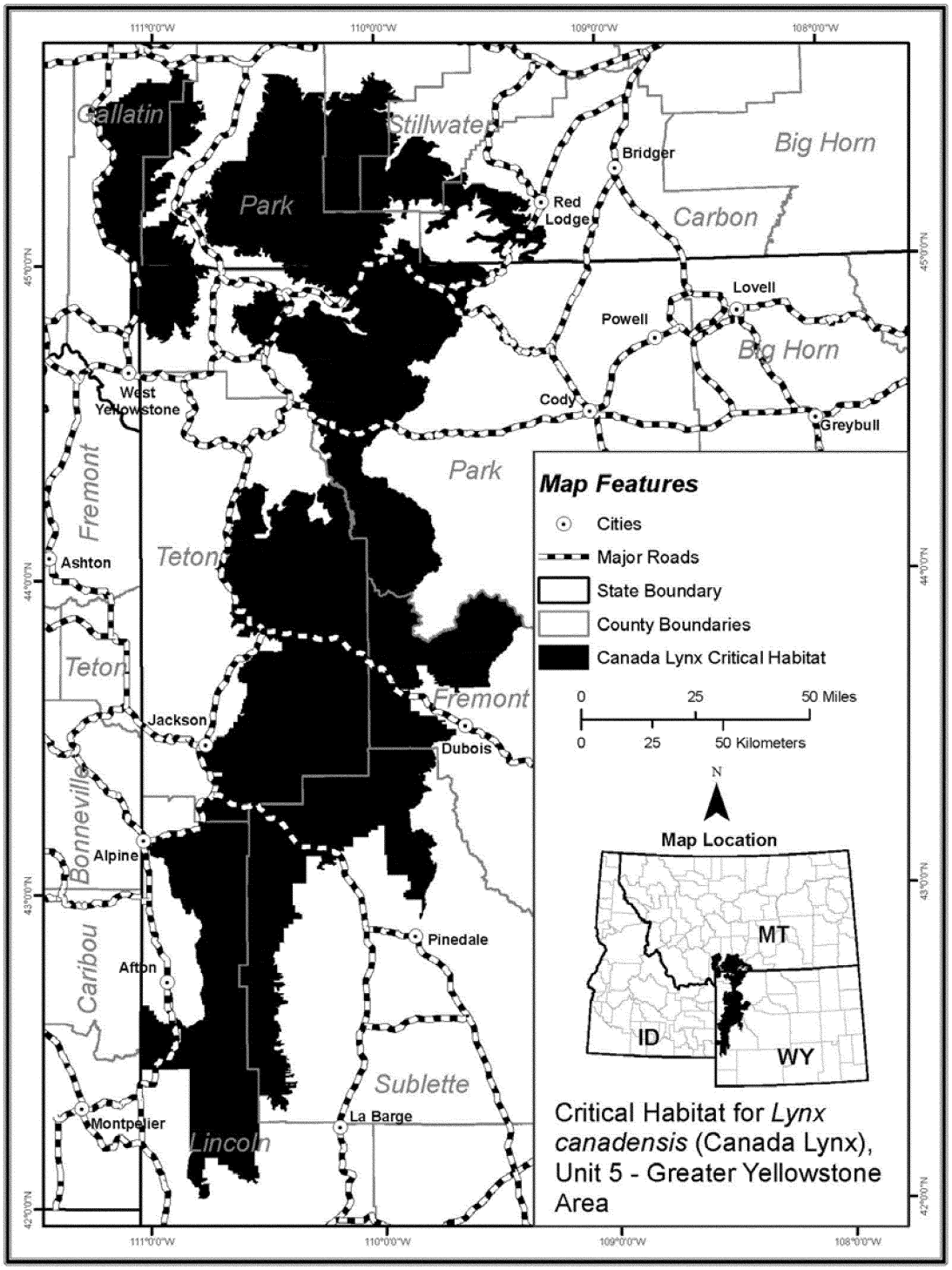
Critical Habitat for *Lynx canadensis* (Canada Lynx), Unit 3 - Northern Rockies

(9) Unit 4: North Cascades—Chelan and Okanogan Counties, WA. Map of Unit 4, North Cascades, follows:



Critical Habitat for *Lynx canadensis* (Canada Lynx), Unit 4 - North Cascades

(10) Unit 5: Greater Yellowstone Area—Carbon, Gallatin, Park, Stillwater, and Sweetgrass Counties, MT, and Fremont, Lincoln, Park, Sublette, and Teton Counties, WY. Map of Unit 5, Greater Yellowstone Area, follows:



* * * * *

Dated: August 27, 2014.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–21013 Filed 9–11–14; 8:45 am]

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FEDERAL REGISTER

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No. 177 September 12, 2014

Part III

Federal Housing Finance Agency

12 CFR Part 1263

Members of Federal Home Loan Banks; Proposed Rule

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1263

RIN 2590–AA39

Members of Federal Home Loan Banks

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of Proposed Rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing to revise its regulations governing Federal Home Loan Bank (Bank) membership primarily to require each applicant and member institution to hold one percent of its assets in ''home mortgage loans'' in order to satisfy the statutory requirement that an institution make long-term home mortgage loans; require each member to comply on an ongoing basis, rather than on a one-time basis as at present, with the foregoing requirement and, where applicable, with the requirement that it have at least 10 percent of its assets in ''residential mortgage loans;'' define the term ''insurance company'' to exclude from Bank membership captive insurers, but permit existing captive members to remain members for five years with certain restrictions on their ability to obtain advances; require a Bank to obtain and review an insurance company's audited financial statements when considering it for membership; and clarify the standards by which an insurance company's ''principal place of business'' is to be identified in determining the appropriate Bank district for membership.

DATES: Written comments must be received on or before November 12, 2014.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number (RIN) 2590–AA39, by any of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include Comments/RIN 2590–AA39 in the subject line of the message.
- *Courier/Hand Delivery:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA39, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20024. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. to 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA39, Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Eric M. Raudenbush, Assistant General Counsel, Office of General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084; or Julie Paller, Senior Financial Analyst, Office of Program Support, Division of Bank Regulation, *Julie.Paller@fhfa.gov,* (202) 649–3201 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. All comments received will be posted without change on the FHFA Web site at *http://www.fhfa.gov,* and will include any personal information provided, such as name, address (mailing and email), and telephone numbers. In addition, copies of all comments received will be available without change for public inspection on business days between the hours of l0:00 a.m. and 3:00 p.m., at the Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

II. Background

A. Overview of Bank Membership Requirements

1. Statutory Requirements

The twelve Federal Home Loan Banks were organized under the Federal Home Loan Bank Act (Bank Act) in 1932 to provide a reserve banking system for thrift institutions to support their residential mortgage lending activities.[1] Each Bank is structured as a cooperative, membership in which allows eligible financial institutions to obtain access to secured loans, known as advances, for the purpose of funding residential housing finance and, in some cases, for funding small business and community development activities.[2] Bank membership is limited to the types of financial institutions listed in section 4(a)(1) of the Bank Act, which are: building and loan associations, savings and loan associations, cooperative banks, homestead associations, insurance companies, savings banks, community development financial institutions (CDFIs), and insured depository institutions.[3] Because nearly all state-chartered depository institutions are now federally insured, there are essentially three categories of institutions that are eligible for Bank membership: (1) FDIC- or NCUA-insured depository institutions; (2) insurance companies; and (3) CDFIs.

In order for any such institution to become a member of a Bank, it must comply with the three requirements set forth in section 4(a)(1) of the Bank Act, which require that the institution: (A) Be duly organized under the laws of any state or the United States; (B) be subject to inspection and regulation under banking, or similar, laws of a state or the United States;[4] and (C) ''makes such home mortgage loans as, in the judgment of the Director [of FHFA], are long-term loans.''[5] An applicant that fails to satisfy any one of those requirements may not become a member of a Bank. (Hereinafter, those requirements will be referred to as the ''duly organized,'' ''subject to inspection and regulation,'' and ''makes long-term home mortgage loans'' eligibility requirements).

Section 4(a)(2) of the Bank Act imposes four additional eligibility requirements on insured depository institutions that were not members of a Bank as of January 1, 1989, requiring that any such institution: (A) Have at least 10 percent of its total assets in ''residential mortgage loans''; (B) be in a financial condition such that advances may be safely made to it; and (C) show that the character of its management and its home-financing policy are consistent with sound and economical home

[1] *See* 12 U.S.C. 1423, 1432(a). The Bank Act also allowed insurance companies to become members because they also supported the residential mortgage lending market.

[2] *See* 12 U.S.C. 1430(a)(2).

[3] The Bank Act defines ''insured depository institution'' to include any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC), as well as any credit union the member accounts of which are insured by the National Credit Union Administration (NCUA). 12 U.S.C. 1422(9).

[4] In lieu of being subject to inspection and regulation by a state or federal regulator, a CDFI applicant must be certified as a CDFI by the United States Department of the Treasury.

[5] 12 U.S.C. 1424(a)(1).

financing.[6] (Hereinafter, those requirements will be referred to as the ''10 percent,'' ''financial condition,'' ''character of management,'' and ''home financing policy'' eligibility requirements). The statute exempts from the ''10 percent'' requirement any ''community financial institution'' (CFI),[7] which are FDIC-insured depository institutions with less than $1 billion in average total assets (adjusted annually for inflation) over the preceding three years.[8]

2. FHFA's Existing Bank Membership Regulation

FHFA's regulation on Bank membership, located at 12 CFR part 1263, specifies how and when an institution must demonstrate compliance with each of the statutory membership eligibility requirements, and otherwise implements those requirements. The regulation also establishes requirements relating to the membership application process, determination of the appropriate Bank district for membership, members' purchase and redemption of Bank capital stock, and voluntary or involuntary termination and reacquisition of membership.

The regulation requires all insured depository institutions, insurance companies, and CDFIs to meet six eligibility requirements: The ''duly organized,'' ''subject to inspection and regulation,'' [9] and ''makes long-term home mortgage loans'' requirements, which by statute apply to all types of institutions; and the ''financial condition,'' ''character of management,'' and ''home financing policy'' requirements, which FHFA and its predecessor agency, the Federal Housing Finance Board (Finance Board) have applied by regulation to all institutions as a matter of safety and soundness. Paralleling the statute, the membership regulation requires that non-CFI depository institutions also meet the ''10 percent'' requirement in order to be eligible for membership, but does not extend that requirement to other types of institutions. However, the regulation does require institutions that are not insured depository institutions (*i.e.,* insurance companies and CDFIs) to have ''mortgage-related assets'' that ''reflect a commitment to housing finance'' in order to be eligible for membership.[10] For each of the six general eligibility requirements and for the ''10 percent'' requirement, the regulation includes at least one separate section specifying how a Bank is to determine whether an institution satisfies the requirement.

The membership regulation also supplements the Bank Act by defining the terms ''long-term,'' ''home mortgage loan,'' and ''residential mortgage loan.'' The Bank Act defines the term ''home mortgage loan'' to mean ''a loan made by a member upon the security of a home mortgage.'' [11] In turn, the statute defines the term ''home mortgage'' to mean a first mortgage, or its equivalent, upon real estate on which one or more homes or dwelling units are located.[12]

The regulation supplements the statutory definition of ''home mortgage loan'' by defining the term generally to include any loan or interest in a loan that is secured by a first lien mortgage or any mortgage pass-through security that represents an undivided ownership interest in such loans or in another security that represents an undivided ownership interest in such loans.[13] The regulation defines the term ''long-term,'' which the statute does not define, to mean ''a term to maturity of five years or greater.''[14]

The regulation defines the term ''residential mortgage loan,'' which relates to the Bank Act's ''10 percent'' requirement, and which the statute does not define, more broadly than the term ''home mortgage loan.'' It defines ''residential mortgage loan'' to include generally all assets that qualify as home mortgage loans (regardless of whether the underlying loans are ''long-term'' or not), plus loans secured by junior liens on one-to-four family property or multifamily property, loans secured by manufactured housing, funded residential construction loans, and mortgage pass-through securities representing an ownership interest in, or mortgage debt securities secured by, any of those types of assets.[15]

Unlike the ''10 percent'' requirement, the Bank Act does not establish quantifiable standards for determining compliance with the ''makes long-term home mortgage loans'' requirement. Neither does the existing membership regulation establish any quantifiable standards. The regulation implements the ''makes long-term home mortgage loans'' requirement through a ''presumptive compliance'' approach, which deems an institution to have satisfied the statutory requirement if, at the time of its application for Bank membership, its most recently filed regulatory financial report demonstrates that it originates or purchases long-term home mortgage loans.[16] However, the regulation does not specify the level of activity that is needed to meet the requirement.

In addition, the existing membership regulation does not require a Bank to assess compliance with the ''makes long-term home mortgage loans'' requirement for any institution once it has become a member of the Bank. In other words, the regulation does not require that a Bank member continue to originate, purchase, or hold long-term home mortgage loans after it has become a member. The absence of an ongoing requirement means that it is possible that an institution could reduce or eliminate its investment in long-term home mortgage loans after becoming a member without affecting its eligibility to continue as a Bank member.

The existing regulation also employs a ''presumptive compliance'' approach to the ''10 percent'' requirement, deeming an applicant subject to that statutory requirement to be in compliance if its most recent regulatory financial report shows that it has at least 10 percent of its total assets in residential mortgage loans.[17] As with the ''makes long-term home mortgage loans'' requirement, the regulation does not require an institution that is subject to the ''10 percent'' requirement to continue to hold 10 percent of its total assets in residential mortgage loans after it becomes a Bank member. The absence of an ongoing requirement means that a member may reduce, or even eliminate, its residential mortgage loan holdings without affecting its eligibility to continue as a Bank member.

B. Advance Notice of Proposed Rulemaking

In creating the Banks, Congress vested in them a number of market advantages designed to enable them to raise funds in the capital markets at interest rates slightly higher than those on comparable Treasury instruments.

[6] 12 U.S.C. 1424(a)(2). Although the statute groups these requirements into three paragraphs, FHFA and its predecessors historically have treated paragraph (a)(2)(C) as containing two separate eligibility requirements—that is, the ''character of management'' and ''home financing policy'' requirements.

[7] *See* 12 U.S.C. 1424(a)(2)(A), (a)(4).

[8] 12 U.S.C. 1422(10)(A). By statute, FHFA must annually adjust the $1 billion CFI asset limit for inflation. 12 U.S.C. 1422(10)(B). The inflation-adjusted CFI limit for 2014 is $1.108 billion. *See* 79 FR 1862 (Jan. 10, 2014).

[9] An institution certified as a CDFI by the Treasury Department's CDFI Fund is deemed to have met the ''subject to inspection and regulation'' requirement by virtue of that certification. *See* 12 CFR 1263.6(a)(2), 1263.8.

[10] 12 CFR 1263.6. The regulation does not define the term ''mortgage-related assets.''

[11] 12 U.S.C. 1422(4).

[12] 12 U.S.C. 1422(5).

[13] 12 CFR 1263.1.

[14] 12 CFR 1263.1.

[15] 12 CFR 1263.1.

[16] 12 CFR 1263.9.

[17] 12 CFR 1263.10.

Those advantages were designed to enable the Banks to provide low cost wholesale funding to their member institutions so that, in turn, those members could provide long-term home mortgage loans to consumers at a reasonable cost. The text of the Bank Act and its legislative history indicate that Congress intended to reserve the benefits of Bank membership, including access to low cost funding and the receipt of dividends on Bank stock, for institutions that are likely to use those benefits to fulfill the primary purposes of the Bank Act. In 2010, FHFA began a review of its membership regulation to determine whether it effectively implements the statutory requirements and advances the purposes that underlie those requirements. One aspect of that review has been to assess whether the existing regulatory membership eligibility requirements, as they are currently applied, could permit the Banks to admit as a member an institution that has such a tenuous connection to home mortgage lending that it should not be allowed to access the benefits of Bank membership.

On December 27, 2010, FHFA published in the **Federal Register** an Advance Notice of Proposed Rulemaking (ANPR), in which the agency discussed, and requested comment on, a number of ways it could revise its membership regulation to ensure that the benefits of Bank membership are being used to further the statutory mission of the Federal Home Loan Bank System (Bank System).[18] Among other things, the ANPR reviewed both the ''makes long-term home mortgage loans'' and ''10 percent'' requirements and discussed whether the regulatory provisions implementing those requirements could be revised to strengthen the ties between Bank membership and the support of housing finance by Bank members. The ANPR examined whether it would be appropriate to amend either or both of those requirements to apply on a continuing basis, rather than only at the time of admission to membership. In addition, the ANPR discussed whether it would be appropriate to establish more objective and quantifiable standards for the ''makes long-term home mortgage loans'' requirement. With respect to each of those issues, FHFA requested comments on how well the existing regulations implement the underlying statutory requirements, whether there is a need to revise the regulations to reinforce the connection between membership and the Banks' housing finance mission, and the appropriateness of the alternatives being considered by the FHFA. Separately, the ANPR also discussed both safety and soundness- and mission-related concerns about the acceptance of so-called ''captive'' insurers as Bank members and queried whether, to address these concerns, FHFA should amend the membership regulation to require that insurance companies be actively engaged in underwriting insurance for third parties and be actively examined and supervised by their appropriate state insurance regulator in order to be eligible for membership.

FHFA received 137 comment letters in response to the ANPR, almost all of which opposed revising the membership regulation in any of the ways discussed in the notice, and very few of which actually responded to the specific questions raised in the ANPR. With respect to the ''makes long-term home mortgage loans'' and ''10 percent'' requirements, the comments appearing most frequently in the letters were that: The ANPR did not explain the purposes to be served by revising the requirements; requiring ongoing compliance would make membership less attractive by reducing access to liquidity, adding costs and paperwork requirements, and creating uncertainty about an institution's ability to remain eligible for membership from period to period; such regulatory changes would constrict the availability of funds for housing finance and community development; and the housing finance nexus that ongoing eligibility requirements would be intended to preserve is already provided by the existing collateral requirements, which require advances to be secured by assets that may include mortgage loans on improved residential property.

A comparatively small number of the comment letters provided substantive responses to some or all of the ANPR questions. With respect to whether FHFA should make the ''10 percent'' requirement ongoing and the manner in which such a requirement might be implemented, a number of credit unions provided substantive comments. These included suggestions that: FHFA give Banks flexibility in applying the requirement, such as by adjusting the percentage downward during any housing finance downturns; FHFA base the measurement of compliance with an ongoing requirement either on an average over a specific time period (which would help to avoid skewed data resulting from seasonal changes in lending and similar factors), or on the highest amount of qualifying assets held at any point in time during a specified time period; and FHFA require members to report noncompliance to their Banks only if they have been out of compliance with the requirement for at least 90 days.

FHFA received minimal response to its request for comment on whether it should require members to comply with the ''makes long-term home mortgage loans'' requirement on an ongoing basis. However, some credit union and insurance company commenters did not object to an ongoing ''makes long-term home mortgage loans'' requirement, so long as it did not also impose quantitative standards.

In response to FHFA's query as to whether it should impose one or more quantitative standards for determining compliance with the ''makes long-term home mortgage loans'' requirement, two CDFIs supported establishing a quantitative standard, so long as FHFA develops appropriate standards for each class of institution that may become a member (although neither opined as to what those standards should be). Another CDFI opposed quantifiable standards, stating that such a requirement would effectively reduce the ability of CDFIs to provide other forms of credit and investments that they typically provide to low- and moderate- income communities. One credit union that supported an ongoing requirement stated that compliance should not be based on a specific percentage or quantity of mortgage loans (especially if based on loan originations), as that would be unfair to smaller lenders and to institutions operating in lower-cost real estate markets that have relatively low average loan sizes. No commenters identified particular levels of home mortgage loans that could be deemed to satisfy this requirement.

FHFA received several comments that were responsive to its query as to how a member's noncompliance with any new ongoing membership requirements should be addressed, and whether termination of membership or some lesser sanctions would be most appropriate for addressing such noncompliance. In their joint comment letter, the Banks contended that noncompliance should not lead to automatic termination of membership, nor should it require the Bank to terminate an institution's membership. The Banks urged FHFA to provide them with the flexibility to cure instances of temporary noncompliance with any new and ongoing membership requirements. One CDFI recommended a one year grace period for members that fall out of compliance and also advocated a reasonable transition period for

[18] *See* 75 FR 81145 (Dec. 27, 2010).

members that are not in compliance at the time the rule is finalized. Another CDFI was more supportive of a strict compliance regime, stating that, if a member is found to be out of compliance, its membership should be terminated after an appropriate grace period, during which the member should be barred from further access to new Bank services. Several credit unions stated that members (specifically, credit unions) should be permitted a period of perhaps one year to cure any non-compliance, based on a good faith representation that the member will attempt to comply.

FHFA also received several comment letters addressing the agency's stated concerns about captive insurers and responding to the related query regarding the possibility of permitting only insurance companies that are actively engaged in underwriting insurance for nonaffiliated parties and that are actively examined and supervised by their state insurance regulator to be Bank members. Those commenters, which included three state insurance regulators, all opposed amending the regulation in the manner suggested, arguing that captive insurers are generally subject to the same state laws, regulations, and oversight as are other insurance companies. None of the commenters addressed FHFA's mission-related concern that captive members may be acting as conduits to provide advances to affiliated companies that are themselves ineligible for Bank membership.

C. Development of the Proposed Rule

1. Summary of Proposed Rule's Principal Provisions

After considering the comments received in response to the ANPR and further studying the issues addressed in that notice, FHFA has decided to publish this proposed rule, which would revise the membership regulation to implement more effectively the statutory eligibility requirements. The proposed rule would establish a quantitative standard for determining compliance with the ''makes long-term home mortgage loans'' requirement, specifying that an institution must have at least one percent of its total assets in home mortgage loans in order to meet that requirement. The proposed rule also would require each Bank member to maintain the one percent ratio on an ongoing basis in order to remain eligible for Bank membership. Similarly, the rule would require each Bank member that is subject to the ''10 percent'' requirement to maintain 10 percent of its assets in residential mortgage loans on an ongoing basis in order to remain eligible for Bank membership. It would require each Bank to determine member compliance with those ongoing requirements annually, using data from members' regulatory financial reports where possible, and auditor certifications where necessary, to calculate the relevant ratios based on a three-year rolling average. Members found to be out of compliance with either requirement would be given one year to return to compliance. A Bank would be required to terminate the membership of any institution that remains out of compliance for two consecutive years.

In conjunction with its proposal to require an applicant or member to maintain a specified percentage of its total assets in home mortgage loans, FHFA is also proposing to expand the list of assets that qualify as ''home mortgage loans'' to include all types of mortgage-backed securities (MBS) that are fully backed by first mortgage loans on single- or multi-family property or by other securities that are fully backed by such loans. Under the existing regulation, only pass-through securities representing an undivided ownership in qualifying loans or securities may be counted as ''home mortgage loans.'' The rule would not substantively change the definition of the term ''residential mortgage loan'' or subject any institution to the ''10 percent'' requirement that is not currently subject to that requirement.

The proposed rule would also make a number of other revisions relating specifically to insurance companies. First, it would limit the types of insurance companies that are eligible for membership by defining the term ''insurance company'' to include only those companies whose primary business is the underwriting of insurance for nonaffiliated persons or entities. Second, it would require that, in determining whether an insurance company applicant meets the ''financial condition'' requirement, a Bank examine the applicant's most recent audited financial statements, in addition to its most recent regulatory report, which is the sole required source of information under the existing regulation. Finally, the rule would add a new provision addressing how the Banks should determine the ''principal place of business'' for insurance companies (as well as for CDFIs).

In addition to these primary revisions, the proposed rule would make a number of conforming changes necessary to integrate the new requirements into the regulation and make some non-substantive revisions to better state various provisions of the regulations.

2. Policy and Legal Considerations Behind Proposed Substantive Revisions

a. Changes to the ''Makes Long-Term Home Mortgage Loans'' and ''10 Percent'' Requirements

As the agency charged by Congress with administering the Bank Act, FHFA has broad authority to interpret the statute regarding issues on which it is silent or ambiguous. The Bank Act does not address whether an institution must engage in any particular minimum level of home mortgage lending in order to be considered to ''make[ ] such home mortgage loans . . . as are long-term loans'' as required under section 4(a). The statute also does not address whether a Bank member that ceases to comply with any of the eligibility requirements of section 4(a) may or must be permitted to continue as a member of a Bank. Accordingly, FHFA has the authority to resolve those questions in a way that renders the eligibility requirements meaningful and effective and that advances the overall purposes of the Bank Act. Specifically, FHFA may adopt a quantitative standard for determining whether an institution complies with the ''makes long-term home mortgage loans'' requirement and may require that Bank members continue to comply with both the ''makes long-term home mortgage loans'' and ''10 percent'' requirements as a condition of retaining their Bank membership.

Section 4(a) of the Bank Act specifies that an institution may be eligible for Bank membership only if it ''makes such home mortgage loans as, in the judgment of the Director, are long-term loans.'' The Bank Act, however, does not address the amount of home mortgage loans an institution must originate or purchase, or the period of time over which an institution must have been engaged in that activity, in order to demonstrate that it makes long-term home mortgage loans. Likewise, the legislative history of the Bank Act sheds little light on how Congress intended the ''makes long-term home mortgage loans'' requirement to be applied. Much of the discussion of the issue in the legislative record centers around the requirement that the mortgage loans made must be ''long-term'' and the relationship of that requirement to the Bank Act's primary purpose of providing funds to lending institutions to make long-term fully amortizing home mortgage loans. The lack of discussion in the legislative history about how the ''makes long-term

home mortgage loans'' requirement is to be applied is not surprising, given that all of the depository institutions that were eligible for Bank membership in 1932 were state-chartered home mortgage lenders that had little, if any, ability to engage in any other types of lending.

The statute and its legislative history are also silent on whether an institution must comply with the membership eligibility requirements of section 4 only when it first becomes a Bank member or also must continue to comply with them in order to remain a member. Both sections 4(a) and 4(b) of the Bank Act refer to their respective eligibility provisions as requirements that must be met in order to ''become'' a Bank member. That Congress used the word ''become,'' however, does not mean that it intended that the statutory eligibility requirements would apply only when an institution first sought to be admitted to membership, but not thereafter. It appears clear that Congress intended to prohibit any applicant that could not demonstrate compliance with the eligibility requirements of section 4 from being admitted to membership. Given the apparent congressional intent to condition admission to membership on an institution's demonstrated support of residential mortgage lending, as shown by compliance with the eligibility requirements, it would be illogical to conclude that Congress would have also intended to allow institutions to abandon their commitment to the residential mortgage markets after having been admitted to membership in a cooperative, the purpose of which was to promote residential mortgage lending. The legislative histories of the original Bank Act and its many amendments support that view, in that they make clear that Congress contemplated that Bank membership would comprise institutions that meet the eligibility requirements specified in section 4 of the Bank Act.

One indication of congressional intent can be found in section 4(a)(3) of the Bank Act, which permits a newly chartered insured depository institution to become a Bank member without meeting the ''10 percent'' requirement, so long as it subsequently demonstrates that it has satisfied that requirement within one year after commencing its business operations.[19] For such institutions, compliance with this eligibility requirement occurs after the institution ''becomes'' a member, which is consistent with construing the eligibility requirements to apply on an ongoing basis. FHFA believes that to construe section 4 of the Bank Act as precluding it from applying the ''makes long-term home mortgage loans'' and ''10 percent'' requirements on an ongoing basis would not be reasonable and would effectively undermine the intent of Congress that the benefits of Bank membership be used to advance the housing finance mission of the Bank System.

In cases where Congress has not addressed the precise question at issue, an agency has the authority to adopt a ''permissible construction'' of a statute it administers.[20] In *Texas Savings and Community Bankers Ass'n* v. *Federal Housing Finance Board,* the United States Court of Appeals for the Fifth Circuit concluded that the Finance Board's interpretation of the ''incidental powers'' clause of section 11(a) of the Bank Act as permitting a Bank to fund mortgage loans directly through its member institutions (a power that is not expressly granted by the statute) was permissible because it was ''consistent with the structure and purpose'' of the Bank Act.[21]

In the Housing and Economic Recovery Act of 2008,[22] Congress amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to establish FHFA as supervisor and regulator of the Banks, as well as Fannie Mae and Freddie Mac (each a ''regulated entity''), and vested in its Director general regulatory authority over those regulated entities.[23] Congress also mandated that the Director exercise that regulatory authority so as to ensure that the purposes of the Safety and Soundness Act and the Bank Act are carried out.[24] Section 1313 of the Safety and Soundness Act further charges the Director with several specific duties, including the duties to ensure that: ''The operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets''; ''each regulated entity complies with [the Safety and Soundness Act] and the rules, regulations, guidelines, and orders issued'' under the Safety and Soundness Act and the Bank Act; and ''the activities of each regulated entity and the manner in which such regulated entity is operated are consistent with the public interest.''[25] Finally, section 1326 of the Safety and Soundness Act authorizes and requires the Director to ''issue any regulations, guidelines, or orders necessary to carry out the duties of the Director under [the Safety and Soundness Act or the Bank Act], and to ensure that the purposes of [those statutes] are accomplished.''[26]

The primary purpose of the Bank Act, since its initial adoption in 1932, has been to support the nation's housing markets by establishing a system of Banks to provide wholesale funds to their member institutions for the purpose of financing those members' residential mortgage lending activities. The ''makes long-term home mortgage loans'' and ''10 percent'' requirements reflect that purpose, as do several other provisions of the statute. For example, the Bank Act states that a Bank may make long-term advances to members only for the purposes of providing funds for residential housing finance.[27] Similarly, the Bank Act limits the types of collateral that a Bank may accept from its members to five categories, among which are whole first mortgage loans on improved residential property and securities representing an interest in such mortgage loans, as well as residential MBS issued by Fannie Mae, Freddie Mac, and Ginnie Mae.[28] Other statutory provisions promote that purpose by requiring each Bank to establish and fund an Affordable Housing Program (AHP) to provide subsidies to members engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing.[29] Congress's decision to include such ''housing finance'' requirements in the Bank Act, touching on several aspects of Bank-member interactions, reflects an intent that the benefits of Bank membership—such as the ability to obtain advances—accrue to institutions that are engaged in residential mortgage lending.

Because the current membership regulation does not require an applicant

[19] 12 U.S.C. 1424(a)(3).

[20] *See Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837, 843 (1984); *see also Texas Savings and Community Bankers Ass'n* v. *Federal Housing Finance Board,* 201 F.3d 551, 554 (5th Cir. 2000) (court's review of former Federal Housing Finance Board's construction of Bank Act was guided by *Chevron* principles).

[21] *Texas Savings,* 201 F.3d at 556; *see also Independent Insurance Agents of America, Inc.* v. *Hawke,* 211 F.3d 638, 643 (D.C. Cir 2000) (stating that ''[c]ourts generally will defer to an agency's interpretation of its statute if it is 'reasonable and consistent with the statute's purpose.' '').

[22] Public Law 110–289, Div. A, 122 Stat. 2654 (2008).

[23] 12 U.S.C. 4511(b).

[24] 12 U.S.C. 4511(b)(2).

[25] 12 U.S.C. 4513(a)(1).

[26] 12 U.S.C. 4526(a).

[27] *See* 12 U.S.C. 1430(a)(2). This provision also allows Banks to make long-term advances to its ''community financial institution'' members for the purpose of providing funding for their small business, small farm, small agri-business, and community development lending activities.

[28] *See* 12 U.S.C. 1430(a)(3)(A)–(B).

[29] *See* 12 U.S.C. 1430(j).

to have any specific amount of home mortgage loans, it is possible to satisfy the ''makes long-term home mortgage loans'' requirement by acquiring a minimal amount of home mortgage loans shortly before applying for membership. Because the regulation does not require that an institution continue to meet either the ''makes long-term home mortgage loans'' requirement or the ''10 percent'' requirement on an ongoing basis once it becomes Bank member, it also is possible for an institution to reduce or eliminate its mortgage loan holdings after becoming a member without losing its eligibility to continue as a Bank member. Thus, it is currently possible for an institution to become a member without having either a history of supporting residential housing finance through the origination or purchase of home mortgage loans or a demonstrated intent to significantly support the residential housing finance market after becoming a member.

In recent years, there have been instances in which institutions having only minimal home mortgage loan assets and no plans to originate or purchase any significant amounts of such assets have been permitted to become Bank members. Although FHFA has found no evidence that this problem is widespread, it believes that, to the extent the current regulation allows for the possibility that institutions having no significant past or future involvement in home mortgage lending may become and remain Bank members, it does not advance the purposes of the Bank Act. Accordingly, the agency has determined that it is necessary to revise its Bank membership regulation to establish a minimum quantitative standard that must be met to satisfy the ''makes long-term home mortgage loans'' requirement, and to require ongoing compliance with both that requirement and the ''10 percent'' requirement. With those revisions, the membership regulation would better ensure that the benefits of membership, such as favorably priced funding through advances, accrue only to institutions that demonstrate a meaningful commitment to supporting residential housing finance and, therefore, would better ensure that the Banks fulfill their housing finance mission. Accordingly, FHFA believes that these new regulatory requirements implement the Bank Act in a way that is ''consistent with the purposes and structure'' of that Act and that is within the authority granted to the agency by both the Bank Act and the Safety and Soundness Act.

As reflected in the existing membership regulation, FHFA's predecessor agencies interpreted section 4 of the Bank Act as allowing compliance with the ''makes long-term home mortgage loans'' and ''10 percent'' requirements to be measured only at the time an institution applies for Bank membership. Those predecessor agencies also concluded that section 4(a) does not require an institution to originate or purchase any minimum level of long-term home mortgage loans in order to be eligible for Bank membership. Those prior interpretations, however, do not preclude FHFA from now adopting a different—but permissible—policy that it believes better serves the purposes of the Bank Act, so long as that change in policy is explained and justified.

Although none of FHFA's predecessor agencies adopted a regulation applying a quantitative standard to the ''makes long-term home mortgage loans'' requirement or applied that requirement on an ongoing basis, as a matter of practice the former Federal Home Loan Bank Board (FHLBB) required an institution to provide evidence that it had a continuing policy of mortgage loan purchases or originations and that it intended to continue to pursue that policy. In internal memoranda, FHLBB staff concluded that isolated or sporadic home mortgage loan originations or purchases were not sufficient to demonstrate compliance with the ''makes long-term home mortgage loans'' requirement.[30] Often, the application of that requirement was considered in conjunction with the ''home financing policy'' requirement, which for many years was considered to require that an institution demonstrate through its actions that it had an active and ongoing policy to finance home mortgage loans.

b. Addition of Definition of ''Insurance Company''

Although both section 4(a)(1) of the Bank Act and § 1263.6(a) of the existing regulation list an ''insurance company'' among the types of institutions that are eligible for Bank membership, neither provision defines that term. As was discussed in the preceding section, where the statute does not define a term FHFA has the authority to define it by regulation, as necessary to give effect to the purpose and intent of the statute. Thus, the proposed rule would define the term ''insurance company'' to mean ''a company whose primary business is the underwriting of insurance for nonaffiliated persons or entities.'' The principal effect of this provision would be to prohibit captive insurers from becoming Bank members.[31] In a related provision, the proposed rule would permit any captive that had been admitted to membership prior to the publication date of this proposed rule to remain a member of its current Bank for five years following the effective date of the final rule, but would cap the amount of advances that a Bank could have outstanding to such a member at 40 percent of the member's total assets and prohibit a Bank from making a new advance, or renewing an existing advance, with a maturity date beyond the five year grace period to such a member. These provisions would not affect the eligibility of other traditional insurance companies to become members, to remain as members, or to obtain advances.

FHFA is taking these actions to address supervisory concerns about certain institutions that are ineligible for Bank membership, but that are using captives as vehicles through which they can obtain Bank advances to fund their business operations. These supervisory concerns are particularly acute when the amounts of advances sought in the name of the captive insurance subsidiary are larger by far than the amount of its insurance liabilities or are comparable to the total assets of the captive. Such circumstances confirm that the advances are not being used by the captive member, but for the business needs of its parent company or an affiliate, which may be barred by law from obtaining Bank advances in its own name. Defining the term in this manner also reflects the likely intent of Congress. When Congress authorized insurance companies to become Bank members in 1932, the concept of captive insurers was essentially unknown in the United States.[32] At that time, insurance companies, particularly life insurance companies, frequently made or purchased mortgage loans which, as longer-term investments, better matched

[30] *See, e.g.,* FHLBB Office of General Counsel Memorandum from Deputy General Counsel Julie L. Williams (Jan. 25, 1988) at 3 (citing earlier memoranda and opining that an institution may satisfy the ''makes long-term home mortgage loans'' requirement by purchasing home mortgage loans, so long as the purchases ''evidence a continuing policy of purchase activity rather than being 'mere isolated instances . . . .'''').

[31] Captive insurers are typically formed by a company as a means of self-insuring certain risks associated with the business of the parent company or an affiliate.

[32] The first captive insurer in the U.S. is generally thought to have been a subsidiary of the Youngstown Sheet and Tube Company that was chartered in Ohio in the 1950s. *See* Peter J. Strauss, *The Definitive Guide to Captive Insurance Companies* 18–20 (2011).

the liabilities that the insurance companies had to their policyholders.

In recent years, a small but growing number of captives have become Bank members. FHFA has scrutinized those institutions and believes that in some cases the primary, or sole, motivation for those captives being created has been to become members in order to serve as a funding conduit through which a parent or affiliate of the captive, which is not itself eligible for Bank membership, may gain access to Bank advances. Those captives have been able to become members because the existing regulation does not prohibit it and does not otherwise distinguish between insurance companies that become members to support their own operations and those that become members with the intention of obtaining advances to finance the business operations of a parent or affiliate.

Recently, several real estate investment trusts (REITs), which are not eligible to become members, have established captive subsidiaries that then became Bank members. A number of those captives then obtained advances in dollar amounts so large that they appear to have no relationship to the operations of the captive and appear to flow to the REITs. The facts that many of those REITs guarantee repayment of the advances made to their captive subsidiaries and provide the collateral for those advances further support the conclusion that the real business and economic purpose of these arrangements is to allow the non-member REITs to obtain Bank advances.[33] Although mortgage REITs are involved in the residential housing finance markets, they are not among the types of institutions that Congress has authorized to become Bank members or to borrow from the Banks, and through the use of captives they have been able to borrow indirectly from the Banks—something the statute precludes them from doing directly. The proposed rule is intended to prevent these arrangements, which FHFA views as circumventing the intent of Congress that the benefits of membership are to be available only to the types of eligible institutions enumerated in the Bank Act.

FHFA understands that it is possible for other types of institutions, including depository institutions owned by a bank holding company, to pass along the economic benefits of membership to their holding company parent or other affiliates, which may not themselves be eligible for membership. In those cases, however, it is unlikely that a federally insured depository institution would have been created for the sole or primary purpose of serving as a funding vehicle for its parent or affiliates. The requirements under state and federal law for organizing and capitalizing a commercial bank or savings association, as well as the requirements associated with obtaining federal deposit insurance, effectively ensure that such institutions will be principally engaged in the business of banking. It is also unlikely that a federally insured depository institution or a traditional insurance company could be established to function solely or primarily as a conduit funding vehicle for Bank advances, and it is even less likely that such an institution would be allowed, as certain captives have done, to obtain advances in amounts comparable to the amount of its total assets. For those reasons, FHFA believes that any future instances in which a depository institution or other insurance company may function to an inappropriate degree as a conduit for its parent or affiliates could be addressed through FHFA's oversight and examination functions.

In addition, captives present a number of safety and soundness concerns for the Banks beyond those presented by insured depository institutions and traditional insurance companies. Among these are the potential that the captive's financial condition could worsen without the Bank's knowledge due to the relative unavailability of objective financial information and ratings as compared to other insurers and depository institutions; the financial condition of the captive, which operates to serve the parent, rather than in its own financial self-interest, may deteriorate rapidly due to the actions of the parent; the parent might decline to provide financial support, or to provide additional collateral, in cases of financial distress; and that the captive's balance sheet may reflect non-diversified risk if its underwriting activities are narrowly prescribed by the parent.

c. Expansion of Definition of ''Home Mortgage Loan''

FHFA is also proposing to expand the definition of ''home mortgage loan'' to include all types of MBS backed by qualifying whole loans and securities. Currently, the definition includes only whole loans secured by a first lien mortgage on residential property and mortgage pass-through securities representing an undivided ownership interest in such loans or in another security that represents an undivided ownership interest in such loans.[34] In effect, the current regulation distinguishes between MBS that provides the holder with a *pro rata* ownership interest in each of the loans in the underlying pool of mortgage loans, and MBS that gives the holder only a right to a specified portion of the cash flows generated by the underlying pool of mortgage loans. Early in the history of the Bank System, the FHLBB determined that an institution's purchase of mortgage loans was the equivalent of ''making'' such loans for purposes of complying with the ''makes long-term home mortgage loans'' requirement. In 1988, the FHLBB first permitted an applicant for Bank membership to use mortgage pass-through securities to meet the ''makes long-term home mortgage loans'' requirement, provided that those securities represented an undivided ownership interest in qualifying whole loans and that the frequency of the institution's purchases evidenced an ongoing policy.[35] When the Finance Board adopted its 1993 membership regulation, it adopted the FHLBB's policy on the use of pass-through securities to satisfy the ''makes long-term home mortgage loans'' requirement, but declined to permit the use of collateralized mortgage obligations (CMOs), real estate mortgage investment conduits (REMICs), and other non-pass-through MBS for that purpose.[36] The Finance Board did not assert that the Bank Act prohibited it from including non-pass-through MBS backed by qualifying loans within the definition of ''home mortgage loan'' and, in fact, noted that it had counted CMOs in assessing applicants' compliance with the ''makes long-term home mortgage loans'' requirement prior to adopting its membership regulation in 1993.

Thus, the current distinction between MBS that give the holder an ownership interest in the underlying loans and those that give the holder a right to certain cash flows from the loans represents a policy determination by the Finance Board about the types of securities that could constitute ''home mortgage loans.'' Accordingly, FHFA is not prohibited from expanding the definition of ''home mortgage loan'' to include MBS that are not pass-through

[33] This also raises safety and soundness concerns because, in the case of REITs, the Banks do not currently have access to the kind of detailed financial and supervisory information that is readily available to them in the case of institutions that are eligible for Bank membership.

[34] 12 CFR 1263.1.

[35] *See* FHLBB Office of General Counsel Memorandum from Deputy General Counsel Julie L. Williams (Jan. 25, 1988).

[36] *See* 58 FR 43522, 43526 (Aug. 17, 1993).

securities, so long as that MBS is backed by whole loans that qualify as ''home mortgage loans'' or securities representing an interest in such loans. In the current financial markets, investors recognize that all types of MBS essentially represent a right to some portion of the cash flows from the underlying mortgage loans. Whether, for example, the holder of the security has an undivided ownership interest in the underlying pool of mortgage loans, or has a beneficial ownership interest in the trust holding the mortgages, or has a contractual right to a specified portion of the cash flows generated by the underlying mortgages will vary depending upon the type of payment, risk, and maturity characteristics the issuer is attempting to achieve. The economic interest of all such instruments is much the same, and the forms of the respective instruments are more of a legal technicality that is neither decisive as to the nature of the economic interest that the owner holds nor the level of support for the mortgage market that the securities provide. Indeed, the availability of the many types of MBS with different characteristics that have evolved to meet investors' needs over the past several decades has made the secondary mortgage market much more liquid. In recognition of this, FHFA believes that it is appropriate to expand the definition of ''home mortgage loan'' to include all types of MBS backed by qualifying assets and eliminate the current distinction that the rules draw between pass-through securities and other types of MBS.

III. The Proposed Rule

A. Definitions—§ 1263.1

The proposed rule would revise the definitions of several terms set forth in § 1263.1 and would also add several new definitions. The only substantive changes to the definitions under the proposed rule would be an expansion of the definition of ''home mortgage loan'' to include all types of MBS backed by qualifying loans and securities and the addition of definitions for the terms ''insurance company'' and ''captive.'' As discussed above, proposed § 1263.1 would define ''insurance company'' to mean ''a company whose primary business is the underwriting of insurance for nonaffiliated persons or entities.'' In connection with this, the rule would define ''captive'' to mean ''a company that is authorized under state law to conduct an insurance business, but that does not meet the definition of 'insurance company' . . . or fall within any other category of institution eligible for membership.''

Existing § 1263.1 defines ''home mortgage loan'' as: (1) A loan or interest in a loan that is secured by a first lien mortgage on one-to-four- or multi-family property; or (2) a mortgage pass-through security that represents an undivided ownership interest in such loans or in another security that represents an undivided ownership interest in such loans. The proposed rule would replace the specific reference to a pass-through security in paragraph (2) of the definition with a more general reference to a security representing either: (i) A right to receive a portion of the cash flows from a pool of qualifying loans; or (ii) an interest in other securities representing such a right. The reference to a right to receive a portion of the cash flows is intended to encompass the rights of a holder of a mortgage pass-through security to an undivided ownership interest in the underlying loans and their principal and interest payments, as well as the rights of a holder ''debt-type'' instruments that grant the holder the right to a specified portion of the cash flows from the pooled mortgage loans. Thus, the proposed revision is intended to bring within the definition of ''home mortgage loan'' all types of MBS—including pass-throughs, CMOs, REMICs, and principal-only and interest-only strips—that are fully backed by whole loans that meet the definition of ''home mortgage loan'' or by other MBS that are fully backed by such loans. The revised definition is not intended to include a bond or other debt security that is a general obligation of the issuer, even if it is collateralized by qualifying mortgage loans.

Each of the remaining revisions to § 1263.1 is intended only to shorten or otherwise clarify either the definition itself or the regulatory text in which the defined term appears; none of the remaining revisions is intended to alter the meaning of any defined term or substantive provision. The proposed rule would revise the definitions of the terms ''appropriate regulator'' and ''CRA'' in § 1263.1 to substitute, for terms that are defined in 12 CFR 1201.1, the nomenclature specified in that section. FHFA recently added part 1201 to contain definitions of terms that are used frequently throughout its regulations so as to eliminate the need to provide definitions for many common terms in multiple CFR parts.[37]

Section 1263.1 of the existing regulation defines the word ''consolidation,'' which is used in various provisions of part 1263 to refer generically to any type of business combination of two or more institutions, to include ''a consolidation, a merger, or a purchase of all of the assets and assumption of all of the liabilities of an entity by another entity.'' The proposed rule would revise that definition by substituting the phrase ''substantially all'' for the word ''all'' to reflect the fact that purchase and assumption transactions do not always involve or require the transfer of ''all'' assets and liabilities of the disappearing institution to the successor institution.

The rule would revise the definition of the term ''regulatory financial report'' to: Remove reference to the ''thrift financial report,'' which is no longer prepared; substitute the word ''institution'' for the word ''applicant''; substitute the short form ''NAIC'' (to be defined separately) for the term ''National Association of Insurance Commissioners''; change the reference to the insurance company regulatory ''report'' to the term ''statement,'' which has a recognized meaning in the field of insurance regulation; and change the term ''computer on-line database'' to the more currently used term ''electronic database.''

The existing regulation defines the term ''long-term,'' which is used in the regulation as a modifier in the term ''long-term home mortgage loan,'' to mean ''a term to maturity of five years or greater.'' The proposed rule would revise that definition to make clear that ''term to maturity'' refers to the term established at the time of origination, and not to the remaining term to maturity at the time an institution acquires the loan or at any subsequent point.

The rule would also revise the definition of ''residential mortgage loan'' by replacing paragraph (5) (referring to ''mortgage pass-through securities'') and paragraph (6) (referring to ''mortgage debt securities'') with a new paragraph (5) intended to refer to both types of securities. The new provision would be similar to paragraph (2) of the proposed definition of ''home mortgage loan,'' referring generally to a security representing either: (i) A right to receive a portion of the cash flows from a pool of loans meeting the requirements of one of paragraphs (1) through (4) of the definition of ''residential mortgage loan''; or (ii) an interest in other securities representing such a right. This revision is not intended to effect any substantive change, but merely to streamline the definition in light of the fact that the proposed changes to the definition of ''home mortgage loan'' would make it

[37] *See* 78 FR 2322 (Jan. 11, 2013).

unnecessary to distinguish between pass-through securities and other types of MBS in the definition of ''residential mortgage loan.'' The rule would also redesignate paragraphs (7) and (8) of the definition as paragraphs (6) and (7), respectively, and would replace references to the various types of qualifying assets that are currently stated in the plural with the singular, as is the case in both the existing and proposed versions of the definition of ''home mortgage loan.''

Finally, the proposed rule would revise the definition of the term ''total assets'' to replace the term ''CDFI applicant'' with the term ''CDFI,'' which is necessary because the key provisions of the proposed rule would apply to CDFI members on an ongoing basis, not just to CDFI applicants. This is consistent with the replacement of the word ''applicant'' with the word ''institution'' in the definition of ''regulatory financial report'' that is noted above. These changes are intended to reflect the fact that, under the proposed rule, a Bank would be required to determine an institution's total assets from its regulatory financial report or audited financial statement not only at the time of application, but also on an ongoing basis after the institution becomes a Bank member.

The proposed rule would also add definitions for the terms ''CRA performance evaluation,'' ''De novo insured depository institution,'' and ''NAIC.'' Defining these terms will allow FHFA to remove lengthy and frequently repeated qualifiers currently used in conjunction with those terms from the substantive sections in which they appear. Thus, under the proposed rule, the term ''CRA performance evaluation'' is defined to refer to a formal evaluation if one is available for a particular institution and time period, and to an informal or preliminary evaluation when a final evaluation is not available. The term ''de novo insured depository institution'' is defined to refer to an insured depository institution that was chartered less than three years prior to applying for Bank membership. The acronym ''NAIC'' refers to the National Association of Insurance Commissioners.

B. Amendment of Substantive Provisions

1. Overview

The primary substantive revisions that the proposed rule would make to part 1263 are discussed above. In addition, the rule's revisions to the ''makes long-term home mortgage loans'' and ''10 percent'' requirements would require several conforming revisions to the regulatory text. Those revisions would: (1) Establish the manner in which the Banks are to determine compliance with the ongoing eligibility requirements; (2) establish the manner in which, and the time within which, de novo insured depository institutions must comply with those requirements; (3) require the Banks to assess the financial condition of their insurance company members, based on their most recent audited financial statements; (4) establish a cure process, under which a member that fails to comply with the ongoing eligibility requirements would have one year to come into compliance; and (5) require the Banks to terminate the membership of any institution that has failed to comply with the ongoing requirements for a second consecutive year. Each of those provisions is discussed in more detail below.

2. Membership Application Process—§§ 1263.2–1263.5

The proposed rule would make several minor revisions to subpart B of part 1263, which governs the membership application process.

In order to make the revised provisions addressing the ongoing membership eligibility requirements under this proposed rule read more cleanly, FHFA is proposing to consolidate within subpart B those requirements that apply only to the membership application stage. Accordingly, the proposed rule would move from § 1263.6(a) (located in subpart C, which contains the provisions addressing the membership eligibility requirements) to the introductory clause of § 1263.2(a), the language that an institution may not become a member until it has submitted an application for membership that complies with the requirements of part 1263. In the existing regulation, § 1263.2(a) requires that an applicant for Bank membership submit to the Bank an application for membership that complies with the requirements of part 1263, but does not state explicitly that an institution may not become a member of a Bank unless it has done so.

Existing § 1263.2(c)(2) governs the documents that a Bank must include in each applicant's application file and membership digest. It requires that ''[a]ll documents required by §§ 1263.6 to 1263.18'' (*i.e.,* the materials required to document the applicant's eligibility for membership) be described in and attached to the application digest that a Bank is required to maintain under § 1263.2(b). Under the proposed rule, both applicants for membership and existing members may be required to provide the Bank with certain documents pursuant to §§ 1263.6 to 1263.19 (as the eligibility provisions would be redesignated). In order to clarify that § 1263.2(c)(2) requires that only those documents pertaining to an application for membership be attached to and described in the application digest, FHFA is proposing to revise that paragraph to refer to ''[a]ll documents required to be filed by an applicant under §§ 1263.6 to 1263.19.''

Section 1263.3(c) of the existing regulation addresses the timing and notice requirements applicable to a Bank's decision on an institution's application for membership. The proposed rule would make a number of non-substantive revisions to that provision so that the requirements as to the timing of the Bank's decision read more precisely. No change in meaning is intended.

Section 1263.4 of the existing regulation addresses the circumstances under which an institution may be admitted to membership in a Bank ''automatically''—that is, without the need to submit the type of full application that would otherwise be required. The proposed rule would make two minor wording changes to § 1263.4(a), which governs automatic membership for certain charter conversions, to make the provision read more clearly. No change in meaning is intended.

The proposed rule also would make certain clarifying changes to § 1263.4(b), which currently provides that any member whose membership is transferred pursuant to § 1263.18(d) shall automatically become a member of the Bank to which it transfers. Existing § 1263.18(d) (which the proposed rule would redesignate as § 1263.19(d)) provides that the transfer of membership from one Bank to another Bank may not take effect until the Banks involved agree on a method of orderly transfer or until FHFA determines the manner in which the transfer will occur in cases where the Banks involved fail to agree. Because neither § 1263.4(b) nor § 1263.18(d) specifies the types of events that constitute a ''transfer'' of membership, FHFA has occasionally received questions about how § 1263.4(b) is to be applied.

Under the proposed rule, § 1263.4(b) would no longer refer to a ''transfer,'' but would instead state more specifically that if a member of one Bank relocates or redesignates its ''principal place of business'' to another Bank's district, it shall automatically become a member of the Bank whose district includes the state in which the

member's new principal place of business is located. This is consistent with the existing regulation, which appears to allow for automatic membership if a member ''redesignates'' its principal place of business pursuant to § 1263.18(c) (which would appear as § 1263.19(c) in the proposed rule).

What is not clear from the current regulation is whether a member that ''relocates'' its home office, which is the default principal place of business for membership purposes, to another Bank district, such as through a merger or corporate reorganization, may also become a member of the new Bank automatically. Because the location of an institution's principal place of business determines where it may be a member, FHFA believes that any corporate transactions that result in a member's principal place of business being moved to another Bank district should allow for that member to become a member of the Bank where the new principal place of business is located. FHFA also has added qualifying language that the automatic membership at the new Bank commences upon the purchase of the minimum amount of stock needed under the new Bank's capital structure plan (hereinafter ''capital plan'').

Section 1263.5 of the existing regulation governs appeals to FHFA of a Bank's decision to deny membership to an applicant. The proposed rule would revise § 1263.5(a)(2) to show the new mailing address for FHFA. FHFA is not proposing any other revisions to this section, but requests comments on whether it should continue to permit applicants that have been denied membership by a Bank to appeal such denials to FHFA. The concept of an appeals process may have been appropriate after the Finance Board first delegated to the Banks the responsibility for approving or denying membership applications in 1996,[38] but is probably less necessary today, given the years of experience that the Banks have had in processing membership applications and the fact that FHFA is not aware of any instance in which an institution has exercised this right of appeal. FHFA also questions whether an institution that had been denied membership would be able to present facts sufficient to convince the agency to overturn the Bank's decision, particularly if the denial had been based on an assessment of the applicant's financial condition, which the Bank may be better suited to address. Although an applicant might contend that a Bank had misinterpreted a particular provision of the membership regulation, FHFA has a separate process under which a Bank may request regulatory interpretations, and that process could serve as the means for resolving questions regarding the proper interpretation and application of the membership regulation in a particular case. FHFA also has an Office of the Ombudsman, which may hear complaints or appeals from any person that has a business relationship with a Bank (*i.e.,* any existing or potential interaction between an applicant and a Bank), and which could provide an alternative means for addressing complaints about a Bank's decision to deny a membership application.[39]

3. Membership Eligibility Requirements—§§ 1263.6–1263.19

Subpart C of the existing regulation, which includes §§ 1263.6 through 1263.18, addresses the requirements that an institution must meet in order to be eligible for Bank membership. Section 1263.6 of the existing regulation sets forth the eligibility requirements for Bank membership. The remaining sections of subpart C address more specifically the manner in which a Bank is to determine an institution's compliance with the eligibility requirements that are set forth in § 1263.6.

a. General Eligibility Requirements—§ 1263.6

Section 1263.6 of the existing membership regulation sets forth the general membership eligibility requirements. The proposed rule would amend § 1263.6(a), as well as § 1263.6(b), to make clear that each of the membership eligibility requirements addressed in those provisions is ongoing and that institutions are expected to comply with them at not only the time they apply for membership, but also after attaining Bank membership. Existing § 1263.6(a) currently provides that an applicant must meet the general eligibility requirements set forth therein in order to ''become'' a member of a Bank. Similarly, existing § 1263.6(b) provides that an applicant to which the ''10 percent'' requirement applies must meet that requirement in order to ''become'' a Bank member. The proposed rule would revise both of those provisions to state that an ''institution'' (as opposed to an ''applicant'') must meet the requirements addressed in each in order to ''be'' (as opposed to ''become'') a Bank member. Although FHFA considers all of the membership eligibility requirements to be ongoing in nature, the proposed rule would require a Bank to terminate membership only when a member has failed to comply with the ''makes long-term home mortgage loans'' or ''10 percent'' requirements, and then only after the member has been given an opportunity to cure its non-compliance. At this time, the agency believes that there are sufficient enforcement mechanisms in place—short of the ultimate sanction of termination—to ensure continuing compliance with the remaining eligibility requirements.[40]

Because the proposed revisions would make clear that the ''10 percent'' requirement is ongoing, the proposed rule would also revise § 1263.6(b) to state explicitly that, as provided by statute, the ''10 percent'' requirement applies only to those non-CFI depository institutions that were not Bank members on January 1, 1989. The existing provision does not include such a reference because, since its promulgation in 1993, the requirement

[38] *See* 61 FR 42543 (Aug. 16, 1996).

[39] *See* 12 CFR part 1213.

[40] For example, under the existing membership regulation, an applicant for Bank membership must in most cases satisfy the ''home financing policy'' requirement by demonstrating that it has achieved a rating of ''Satisfactory'' or better on its most recent CRA evaluation. While the regulations do not require a member to maintain a ''Satisfactory'' or better CRA rating in order to retain its Bank membership, they do mandate restrictions on access to advances for failure to maintain such a rating. Under FHFA's Community Support regulation, each Bank member is subject to a biennial ''community support review,'' under which the members selected for review for a particular time period are required to submit to FHFA a ''community support statement'' that reflects its most recent CRA rating and summarizes the activities it has undertaken in support of first-time home buyers. *See* 12 CFR 1290.2. Under that regulation, Bank members subject to CRA are expected to maintain a CRA rating of ''Satisfactory'' or better. A member that receives a CRA rating of ''Substantial Non-Compliance'' will (with some exceptions) have its access to long-term advances restricted by FHFA until that member again achieves a ''Satisfactory'' CRA rating. A member that receives a ''Needs to Improve'' rating will be given one CRA evaluation cycle to return to a rating of ''Satisfactory'' or better and, if it fails to do so at that time, will have its access to long-term advances restricted until it again achieves a ''Satisfactory'' CRA rating.

In addition, the ''financial condition'' eligibility requirement requires that an institution's financial condition be such that advances may be safely made to it. Section 9 of the Bank Act and FHFA's advances regulation permit a Bank to limit a member's access to advances if its credit underwriting indicates that it is advisable to do so. 12 U.S.C. 1429 (a Bank may deny or conditionally approve requests for advances); 12 CFR 1266.4(a). The advances regulation also requires a Bank to limit or restrict access to advances in the case of a member that lacks positive tangible capital, but that has not yet reached the point of insolvency. 12 CFR 1266.4(b). The ''duly organized'' and ''subject to inspection and regulation'' eligibility requirements are essentially self-enforcing in that any member that fell out of compliance with either of those requirements could not continue to operate as a financial institution.

has been enforced only at the time of application and, therefore, applicants to which it has been applied would necessarily not have been Bank members on January 1, 1989.

The proposed rule would delete existing § 1263.6(c), which requires that an applicant that is not an insured depository institution—*i.e.,* an insurance company or non-depository CDFI—have ''mortgage-related assets'' (a term that is not defined in the regulation) that reflect a commitment to housing finance, as determined by the Bank in its discretion. Among other things, the proposed new quantitative and ongoing ''makes long-term home mortgage loans'' requirement would provide a more specific and meaningful standard for measuring a non-depository institution's commitment to housing finance than the non-specific standard set forth in existing § 1263.6(c). Because of this, § 1263.6(c) would be rendered moot and thus could be repealed.

Existing § 1263.6(d) states that ''[e]xcept as otherwise provided in this part, if an applicant does not satisfy the requirements of this part, the applicant is ineligible for membership.'' The proposed rule would redesignate the substance of this provision as § 1263.6(c)(1) and revise the wording to emphasize the need for continuing compliance with the ongoing eligibility requirements. The proposal also would remove the qualifier ''except as otherwise provided in this part'' as redundant (because the phrase ''does not meet the requirements of this part'' is intended to take into account the exceptions to the primary requirements), while adding the qualifier ''except as provided in paragraph (c)(2).''

Proposed § 1263.6(c)(2) contains a new provision addressing the consequences to existing captive members of the new definition of ''insurance company,'' which would make clear that captive insurers are ineligible for Bank membership. Paragraph (c)(2)(i) would permit any captive that had become a member prior to the publication date of this proposed rule to remain a member of its current Bank for five years following the effective date of the final rule. Because of the supervisory concerns, described above, associated with ineligible institutions using captives as funding vehicles for their own business operations, the proposed rule would bar a Bank from making or renewing any advance to such a captive if after doing so the total advances to the captive would exceed forty percent of its assets. It would further bar a Bank from making or renewing any advance with a maturity date after the end of the five year membership grace period to such a captive. The proposed rule would not prohibit a Bank from allowing outstanding advances to captives that were made or renewed prior to the effective date of the final rule from running to maturity, even if the maturity date falls after the end of the five year grace period.

Paragraph (c)(2)(i) is intended to mitigate to a reasonable extent the burden on any captive insurer that became a Bank member in good faith reliance on the existing membership regulation prior to the time FHFA provided notice, by means of this proposed rule, of its intention to limit Bank membership to insurance companies that primarily underwrite risks to nonaffiliated parties. The limitations on the terms to maturity of new and renewed advances and on the level of outstanding advances is intended to permit a grandfathered captive that chooses to remain a member during the grace period to continue to transact a reasonable amount of business with its district Bank, while limiting its ability to act as a conduit to funnel advance proceeds to affiliates that are themselves ineligible for Bank membership. Paragraph (c)(2)(ii) would require a Bank to terminate any such grandfathered captive members effective on the last day of the five year membership grace period, in the manner provided under § 1263.27.

If any captive insurer were to become a member of a Bank after the date of publication of this proposed rule, that entity would be ineligible to continue as a member of the Bank as of the effective date of the final rule, if adopted as proposed. In that case, FHFA would interpret the regulatory regime that would be in place on that date to require the immediate termination of that captive's Bank membership and prompt liquidation of any outstanding advances to that captive. In the event that any Bank approves a captive insurer for membership during the period between the publication of this proposed rule and the effective date of the final rule, FHFA will consider whether to make those requirements explicit in the final rule.

b. ''Makes Long-Term Home Mortgage Loans'' Requirement—§ 1263.9

Section 1263.9 of the existing regulation implements the ''makes long-term home mortgage loans'' requirement by stating that an applicant shall be deemed to make long-term home mortgage loans if, based on its most recent regulatory financial report, it originates or purchases long-term home mortgage loans.[41] The proposed rule would revise this section in two fundamental respects. First, it would establish a quantitative standard that each institution must meet in order to be deemed to make long-term home mortgage loans. Second, it would require that each member remain in compliance with the new quantitative standard on an ongoing basis in order to remain a member.

Specifically, § 1263.9(a) would provide that an institution shall be deemed to make long-term home mortgage loans, as required by the Bank Act and § 1263.6(a)(3), if it maintains at least one percent of its total assets in long-term home mortgage loans. Proposed § 1263.9(a) would also state explicitly that each Bank member must remain in compliance with this standard on a continuous basis.

Proposed § 1263.9(b) would address the method by which a Bank must assess each institution's compliance with the one percent asset ratio standard set forth in paragraph (a). Section 1263.9(b)(1) would specify that a Bank must calculate each member's and applicant's home mortgage loans-to-total assets ratio using three-year averages for both the numerator and the denominator, with all numbers being as of the end of the preceding three calendar years.

In cases where an institution has substantial mortgage banking operations—*i.e.,* it originates loans for resale rather than for portfolio—its year-end balance sheet for any given year may not fully reflect its support for housing finance if it originated a substantial amount of home mortgage loans during the year that were then sold prior to year-end. FHFA believes that, given that the required HML-to-total asset ratio is only one percent and that the ratio is calculated based on average holdings over three year-ends, it is probably not necessary for the rule to require a Bank to take into account such ''flow'' business in determining whether an institution complies with the ''makes long-term home mortgage loans'' requirement. In addition, it is likely that most Bank members' regulatory financial reports will not contain the data necessary to determine the amount of the institution's flow business. Nonetheless, the agency requests comment on whether the final rule should include such a provision and, if

[41] In the case of a CDFI applicant that does not file regulatory financial reports, existing § 1263.9 permits the institution to establish its compliance by providing other appropriate documentation to the Bank.

so, how a Bank should be required to obtain the necessary data.

Proposed § 1263.9(b)(2) explains that the sources of the data for this calculation, and its required frequency and timing, are addressed in § 1263.11, which is a new provision that would be added as part of this proposed rule. As discussed below, proposed § 1263.11 would require a Bank to perform the calculation annually for each of its members, as well as at the time an institution applies for membership. It would further require the Bank to base its initial calculation on data obtained from an institution's regulatory financial report, but would permit the institution to provide data from certain alternative sources if it does not file a regulatory financial report or if the initial calculations failed to show that the institution was in compliance with the one percent standard. These requirements are addressed in a separate section because they are common to the calculation of both the home mortgage loans-to-total assets ratio and the residential mortgage loans-to-total assets ratio that would need to be calculated to determine compliance with the ''10 percent'' test under proposed § 1263.10.

One of FHFA's objectives in this proposed rulemaking is to identify a minimum amount of home mortgage loans at which an institution could be deemed to satisfy the ''makes long-term home mortgage loans'' requirement, *i.e.,* a level at which an institution's mortgage loan holdings or originations can be considered to demonstrate the type of *bona fide* commitment to home mortgage lending that Congress intended when it adopted the ''makes long-term home mortgage loans'' requirement. FHFA considered a range of home mortgage loan-to-total assets ratios to be used as the minimum standard under this proposed rule, but several factors have driven the agency to propose a one percent ratio. First, FHFA believes that the one percent standard represents the lower bound for any range of percentages that could be used to assess an institution's commitment to home mortgage lending. Any institution that has less than one percent of its total assets in home mortgage loans clearly would not have the requisite commitment to home mortgage lending that Congress sought to support through the benefits of Bank membership.

Second, FHFA believes that the minimum level of home mortgage loans should not be so high as to require a significant number of members to materially alter their business and investment practices in order to retain their Bank membership. Finally, FHFA believes that whatever home mortgage loans-to-total assets ratio it adopts to implement the ''makes long-term home mortgage loans'' requirement must complement, but not conflict with, duplicate, or supplant, the ''10 percent'' residential mortgage loans-to-total assets ratio requirement. Because the range of assets that qualify as home mortgage loans is considerably more narrow than the range of assets that qualify as residential mortgage loans, any minimum asset ratio chosen for the ''makes long-term home mortgage loans'' requirement should be less than (and perhaps considerably less than) 10 percent of total assets. Otherwise, the minimum ratio for the ''makes long-term home mortgage loans'' requirement could effectively subsume the ''10 percent'' requirement. For example, requiring each member to hold 10 percent of its assets in home mortgage loans (which are a subset of residential mortgage loans) would effectively require all members to hold 10 percent or more of their assets in residential mortgage loans. That would conflict with the Bank Act, which requires that only non-CFI depository institution members must maintain 10 percent of their assets in residential mortgage loans.

Although FHFA is proposing to use one percent of total assets as the standard for compliance with the ''makes long-term home mortgage loans'' requirement, it also believes that it could establish a higher percentage without either supplanting the ''10 percent'' requirement or unduly burdening a significant number of existing members. The agency will continue to consider whether to establish the standard at some higher percentage, such as two percent, or possibly as high as five percent, as part of this rulemaking. To aid it in deciding this issue, FHFA requests public comments on whether setting the minimum required home mortgage loans-to-total assets ratio at a percentage greater than one percent of a member's total assets would be more consistent with the statutory intent and, if so, what the appropriate percentage should be in the final rule.

In attempting to determine an appropriate level at which to set the proposed quantitative standard, FHFA considered the possible consequences of requiring each member to maintain a minimum home mortgage loans-to-total assets ratio set at various levels between one and five percent. Based on information obtained from the December 31, 2013 regulatory financial reports of the Banks' insured depository institution members, FHFA determined that the vast majority of those members would have been in compliance even with an asset ratio requirement set as high as five percent, with most of those institutions holding home mortgage loans in amounts far in excess of that threshold.

More specifically, data obtained from the Federal Financial Institutions Examination Council 031 and 041 call reports (FFIEC call reports) filed by the 5,976 commercial banks and savings associations that were Bank members and for which information was available as of December 31, 2013 indicates that only 47 of those members, or 0.8 percent, would have failed to comply with a home mortgage loans-to-total assets ratio requirement of one percent, even based on that limited data. The same data indicated that 86 of those Bank members (or 1.4 percent) would have failed to comply with a quantitative standard set at two percent, while 299 (or 5.0 percent) would have failed to comply with a standard set at five percent. Data obtained from the December 31, 2013 NCUA 5300 call reports (NCUA call reports) filed by the 1,204 credit unions that were Bank members and for which information was available as of that date showed that only 14 credit union members (or 1.2 percent) would have failed to comply with a quantitative standard set at one percent, 29 (or 2.4 percent) would have failed to comply with a standard set at two percent, and 67 (or 5.6 percent) would have failed to comply with a standard set at five percent.

Although, relatively speaking, a much lower proportion of insurance company members would have been in compliance with a quantitative requirement set at any point between one and five percent, a majority of existing insurance company members would have been in compliance even with a five percent requirement, based on the 2013 year-end data. Data from the December 31, 2013 NAIC annual statements filed by 253 insurance company members with their state regulators indicated that 42 (or 16.6 percent) would have failed to comply with a quantitative standard set at one percent, 59 (or 23.3 percent) would have failed to comply with a standard set at two percent, and 105 (or 41.5 percent) would have failed to comply with a standard set at five percent.[42]

[42] FHFA was able to obtain annual statement data for only 253 of the 284 insurance companies that were Bank members as of December 31, 2013. Fourteen of the 29 insurance company members for which no data was available are captives. All three sets of data reflect the expanded definition of ''home mortgage loan'' that FHFA is proposing as part of this rule. If the existing definition is retained

Continued

The agency currently lacks access to the data necessary to determine how many CDFI members could comply with an ongoing quantitative ''makes long-term home mortgage loans'' requirement.

Because those figures are based only on the portion of home mortgage loan assets that can be measured with accuracy from the members' respective call reports and annual statements, it is likely that a significant number of the institutions that appeared to fall short of the one, two, and five percent ratios based on that data alone would actually exceed those ratios once the assets that cannot be measured accurately from the call reports and annual statements are taken into account.[43] For example, while the NAIC annual statement provides data on loans secured by mortgages on one-to-four family or multi-family property held by an insurance company, it does not distinguish between those secured by first mortgages (which qualify as ''home mortgage loans'') and those secured by junior mortgages (which do not qualify). If even half of those whole loans were to be counted as home mortgage loans, the number of insurance company members appearing to be out of compliance would be much lower: 18 (or 7.1 percent) would have failed to comply with a quantitative standard set at one percent; 30 (or 11.9 percent) would have failed to comply with a standard set at two percent; and 79 (or 31.2 percent) would have failed to comply with a standard set at five percent. Thus, the latter figures may be more representative of the actual number of insurance company members that would have been out of compliance with a quantitative ''makes long-term home mortgage loans'' requirement than the figures listed above.

In addition, while the figures above are based upon the amount of home mortgage loans held by those members at one point in time, compliance with the quantitative standard would be based on the average amount of home mortgage loans held at the three preceding year-ends under the proposed rule. It is possible that the number of members failing to meet those hypothetical ratios might be lower still if average data from the preceding three year-ends had been used. In a similar fashion, of those institutions that would fail to meet the above quantitative requirements, some are only slightly below the particular threshold, which suggests that they could readily comply with an ongoing quantitative requirement by modestly adjusting their balance sheets.

c. ''10 Percent'' Requirement—§ 1263.10

Section 1263.10 of the existing membership regulation implements the statutory ''10 percent'' requirement. That provision states that an insured depository institution applicant to which the ''10 percent'' requirement applies shall be deemed to comply with that requirement if, based on its most recently filed regulatory financial report, the applicant has at least 10 percent of its total assets in residential mortgage loans. For purposes of determining compliance with the ''10 percent'' requirement, the existing regulation excludes from the asset ratio calculation assets held by the institution that would otherwise qualify as residential mortgage loans, but that have been pledged to secure mortgage debt securities. The proposed rule would replace nearly all of the text of existing § 1263.10.

Proposed § 1263.10(a) would provide that an institution shall be deemed to comply with the statutory and regulatory ''10 percent'' eligibility requirement if it maintains at least ten percent of its total assets in residential mortgage loans.

Proposed § 1263.10(b) addresses the method by which a Bank would determine whether an applicant or member maintains at least ten percent of its total assets in residential mortgage loans, as would be required under § 1263.10(a). The requirements of § 1263.10(b) would parallel those that would apply to determining compliance with the ''makes long-term home mortgage loans'' requirement, which are set forth in proposed § 1263.9(b).

Proposed § 1263.10(b)(1) specifies that, in determining whether an applicant or member to which the ''10 percent'' requirement applies maintains at least ten percent of its total assets in residential mortgage loans, a Bank must calculate the institution's residential mortgage loans-to-total assets ratio using three-year averages for both the numerator and the denominator, with all numbers being as of the end of the preceding three calendar years. Like the existing regulation, proposed § 1263.10(b)(1) would also provide that loans or securities used to secure mortgage debt securities are not to be included in the amount of residential mortgage loans held for purposes of the ''10 percent'' requirement calculation. Proposed § 1263.10(b)(2) explains that the sources of the data for the ''10 percent'' requirement calculation, and the required frequency and timing of the calculations, are addressed in proposed § 1263.11.

FHFA examined December 31, 2013 call report data for 1,719 Bank members (515 banks and savings associations and 1,204 credit unions) that the agency estimates would have been subject to the proposed ongoing ''10 percent'' requirement as of that date in an attempt to estimate the number of such institutions that would have been out of compliance with an ongoing requirement. As is the case with measuring the amount of an institution's home mortgage loans from call report data, and as is discussed in more detail below, it is not possible to determine from either the FFIEC or NCUA call report the precise amount of assets qualifying as residential mortgage loans that are held by the reporting institution.

FHFA's analysis indicated that only a relatively few members would have been out of compliance with an ongoing ''10 percent'' requirement based on the call report data alone. That data indicated that all but 52 members (or 3.0 percent of those to which the requirement would apply) would have complied with the ''10 percent'' requirement if it had been applied to them as of that date. Of those institutions, 16 were commercial banks and savings associations (or 3.1 percent of the FDIC-insured institutions) and 36 were credit unions (or 3.0 percent of credit unions). Moreover, 15 of those 52 members had more than nine percent of their total assets in residential mortgage loans, while another 18 had between seven and nine percent of their total assets in residential mortgage loans. Thus, it is possible that the majority of members that appeared to be out of compliance based solely on the call report data might be still be able to comply with an ongoing requirement if

(*i.e.,* if only pass-through securities are counted instead of all types of MBS backed by qualifying loans), the percentage of member institutions that would appear to be out of compliance based solely on data available from the regulatory financial reports would be somewhat higher.

[43] As explained in the discussion of proposed § 1263.11 below, it is not possible to determine from either the FFIEC call report, the NCUA call report, or the NAIC annual statement the precise amount of assets qualifying as ''home mortgage loans'' held by the reporting institution. However, it is possible in all cases to measure accurately the institution's holdings of certain types of home mortgage loan assets. Loans secured by first mortgages on one-to-four family residential properties and securities backed by mortgages on one-to-four family properties that are issued or guaranteed by Ginnie Mae, Fannie Mae, or Freddie Mac can be measured accurately from the FFIEC call report. Loans secured by first mortgages on one-to-four family residential properties and a portion of loans secured by first mortgages on multifamily properties can be measured accurately from the NCUA call report. Securities backed by mortgages on one-to-four and multi-family properties that are issued or guaranteed by Ginnie Mae, Fannie Mae, or Freddie Mac can be measured accurately from the NAIC annual statement.

given an opportunity to adjust their balance sheets or to identify additional residential mortgage loan assets that are not readily apparent from the call reports. It is also possible that the number of insured depository institutions failing to meet the 10 percent ratio might be lower still if data from the preceding three year-ends—as opposed to one point in time—had been used, as would be required in making the compliance determination under the proposed rule.

d. Timing of and Standards for Asset Ratio Calculations—§ 1263.11

The proposed rule would add to part 1263 a new § 1263.11, which would specify the required frequency and sources of data for the calculations to determine whether an institution maintains at least one percent of its total assets in home mortgage loans or, if applicable, maintains at least 10 percent of its assets in residential mortgage loans that are required under §§ 1263.9(b) and 1263.10(b), respectively. Proposed § 1263.11(a)(1) would provide that a Bank must determine whether an applicant maintains those minimum asset ratios at the time it considers that institution's application for Bank membership. In addition, proposed § 1263.11(a)(2) would require that a Bank determine whether each of its members is continuing to maintain those minimum asset ratios by performing the calculations required under §§ 1263.9(b) and 1263.10(b) once annually, as soon as practicable after the member's final regulatory financial report or audited financial statements for the preceding year become available.

Proposed § 1263.11(b) specifies the required sources of data for both the ''makes long-term home mortgage loans'' and ''10 percent'' asset ratio calculations. For insured depository institutions and insurance companies, proposed § 1263.11(b)(1) would require a Bank to obtain the data in the first instance from each institution's three most recently filed year-end regulatory financial reports. In cases where that data does not show the institution to be in compliance, a Bank would be permitted to accept a written certification from the institution's external auditor stating the actual amount of the relevant assets held by the institution on the appropriate dates and to use those figures as the basis for its calculation.

Proposed § 1263.11(b)(2) addresses the sources of data for asset ratio calculations relating to CDFIs that are not credit unions and that, therefore, do not file a regulatory financial report. It would require that, in performing those calculations for such a CDFI, a Bank obtain the relevant data from the CDFI's annual audited financial statements. If the data contained in the financial statements does not demonstrate compliance, then the proposed rule would permit the Bank to accept a written certification from the CDFI's external auditor stating the actual amount of the relevant assets held by the CDFI on the appropriate dates and to use those figures as the basis for its calculation. For any non-credit union CDFI with average total assets of less than $100 million over the three preceding year-ends, a Bank would be permitted to use a written certification prepared by an executive officer of the CDFI, in lieu of a certification from the external auditor.

Proposed § 1263.11(c) provides that, in determining the amount of an institution's long-term home mortgage loans or residential mortgage loans for purposes of the required asset ratio calculations, a Bank shall follow guidance issued by FHFA regarding the derivation of data from particular types of regulatory financial reports, including the extent to which particular schedules or line items may be used to determine the amount of an institution's home mortgage loans or residential mortgage loans. Because regulatory financial reports are subject to change by the financial institution regulators, FHFA expects that it will need to issue guidance periodically to address any questions about how the Banks are to extract the relevant data from those reports.

FHFA's primary intent in requiring a Bank to use regulatory financial reports for the calculations required under proposed §§ 1263.9(b) and 1263.10(b) is to minimize, and in most cases to eliminate, the need for Bank members to take any action to prove their compliance with the proposed ongoing asset ratio requirements. This approach should also minimize the administrative burden on the Banks associated with performing one or both of those calculations. The regulatory financial reports are readily available to the Banks, who should be able to confirm compliance with the asset ratio requirements through that report data for the vast majority of their members. Most, and possibly all, of the Banks already rely on data drawn from the FFIEC and NCUA call reports to ascertain the level of ''residential housing finance assets'' held by their insured depository institution members in determining whether those members are in compliance with the ''proxy test'' requirement imposed by § 1266.3(b) of FHFA's advances regulation.[44] Although initially it will likely require some time and investment for each Bank to develop systems to extract the appropriate data and to run the required calculations, once that has been accomplished, the Banks should be able to conduct the annual calculations without undue burden.

One drawback of relying upon data drawn from members' regulatory financial reports is that none of the types of reports filed by Bank members—*i.e.,* the FFIEC call report filed by FDIC-insured commercial banks and savings associations, the NCUA call report filed by credit unions, or the NAIC annual statement filed by insurance companies with their state regulators—provides sufficient information for a Bank to determine accurately the full amount of home mortgage loans or residential mortgage loans held by the reporting institution. Each of those three reports contains one or more schedules comprising numerous line items that break down the reporting institution's balance sheet assets with varying degrees of specificity. In each of the reports, certain assets that qualify as either a home mortgage loan or as a residential mortgage loan are reported on line items that may include other assets that do not qualify. In those cases, it is not possible to determine the portion of the total dollar amount reported for the line item that represents the amount of qualifying assets held by the reporting institution. However, each of the three reports contains one or more line items that includes only assets that qualify as either a home mortgage loan or a residential mortgage loan and, therefore, permits a reliable measurement of at least a portion of the qualifying assets held by the reporting institution. If a Bank can determine from those line items alone that a particular member holds at least the required ratio of home mortgage loans or residential mortgage loans to total assets, then it need not

[44] The advances regulation provides that a Bank may make long-term advances (*i.e.,* those with an original term to maturity greater than five years) only for the purpose of enabling a member to purchase or fund ''residential housing finance assets'' (a term that is defined in § 1266.1 of the advances regulation). *See* 12 CFR 1266.3(a). To implement that requirement, the regulation further requires that, prior to approving an application for a long-term advance to a member, a Bank determine that the principal amount of all long-term advances currently held by that member does not exceed the total book value of residential housing finance assets held by such member. *See* 12 CFR 1266.3(b). That calculation, which is commonly referred to as the ''proxy test,'' is intended to provide a rational means of measuring compliance with the regulation, while recognizing the fungible nature of money.

inquire any further, *i.e.,* it need not determine the full amount of the member's qualifying assets, to comply with the regulation.

Two types of assets that are likely to represent a significant amount of most commercial banks' and savings associations' home mortgage loan holdings can be measured accurately from the FFIEC call report: (1) Loans secured by first mortgages on one-to-four family residential properties; and (2) securities issued or guaranteed by Ginnie Mae, Fannie Mae, or Freddie Mac representing an interest in first mortgage loans on one-to-four family properties. The line item categories reflected in the NCUA call reports differ from those in the FFIEC call reports and are broken down in such a way that makes it more difficult to measure accurately the level of home mortgage loans held by a credit union. However, loans secured by first mortgages on one-to-four family residential properties and a portion of loans secured by first mortgages on multifamily properties can be measured accurately from the NCUA call report.

It is easier to measure accurately from call report data the amount of residential mortgage loans held by a reporting institution, because the specific assets that fall within the regulatory definition of that term are broader and more numerous than those that fall within the definition of home mortgage loan and, therefore, more line items on both the FFIEC and NCUA call reports include assets qualifying as residential mortgage loans without also including assets that do not qualify. For example, with the exception of MBS backed by mortgage loans on multi-family properties, a Bank could accurately measure from the FFIEC call report all of the major categories of residential mortgage loan assets that are likely to be held by most commercial banks and savings associations. While the NCUA call report does not contain as many different categories as the FFIEC call report, it is possible to measure accurately a majority of the primary categories of residential mortgage loan assets from that report.

As discussed above, FHFA drew data from recently filed call reports of existing insured depository institution members and annual statements of existing insurance company members to measure, to the extent possible, the amount of home mortgage loans and, for those institutions that would be subject to an ongoing ''10 percent'' requirement, the amount of residential mortgage loans held by such members. The purpose of that exercise was not only to estimate the number of existing members that would not meet the proposed ongoing asset ratio requirements, but to determine whether the FFIEC and NCUA call reports and the NAIC annual statements could be used as a reliable source for monitoring members' compliance with the ongoing requirements. The fact that FHFA could determine from the call report data that all but a small percentage of insured depository institution members would comply with both of the proposed ongoing asset ratio requirements indicates that the FFIEC and NCUA call reports can be used to confirm compliance with those requirements for the vast majority of the Banks' insured depository institution members.

Although data drawn from the NAIC annual statements indicated that a higher percentage of insurance company members than insured depository institution members would have been out of compliance with the one percent home mortgage loans-to-total assets requirement, this appears to be due to the fact that those insurance companies are actually holding fewer home mortgage loans and not because it is any more difficult to measure those holdings from the NAIC annual statements than it is from the FFIEC and NCUA call reports. A Bank would be able to use the annual statement to measure an insurance company's holdings of MBS issued or guaranteed by Ginnie Mae, Fannie Mae, or Freddie Mac and backed by first mortgage loans on one-to-four family or multifamily properties. Those types of agency securities appear to make up the predominant portion of home mortgage loan assets held by most insurance companies. Consequently, FHFA believes that the NAIC annual statement would serve as a reliable source for a Bank to confirm compliance with the proposed ongoing quantitative ''makes long-term home mortgage loans'' requirement for the majority of its insurance company members. Because insurance company members are not subject to the ''10 percent'' requirement, there is no need to determine the amount of their residential mortgage loans.

CDFI members, other than those that are credit unions, do not have a prudential federal or state regulator, nor do they file periodic regulatory financial reports that provide information about their holdings of home mortgage loans. For that reason, the proposed rule would require a Bank to look first to a CDFI member's audited financial statements to assess its compliance with the quantitative ''makes long-term home mortgage loans'' requirement. If the audited financial statements do not provide sufficient information to determine compliance, then § 1263.11 of the proposed rule would allow a Bank to accept a written certification from the CDFI's external auditor attesting to the actual amounts of its total assets and home mortgage loans. For CDFIs with assets less than $100 million, the proposed rule would allow a Bank to accept a certification from an executive officer in lieu of one from the external auditor.

Most, if not all, of the Banks already have systems and procedures in place to obtain regular periodic certifications from members as to the amounts of their residential housing finance assets for purposes of complying with the ''proxy test'' for obtaining long-term advances. A number of Banks require their insurance company and CDFI members to self-certify as to their holdings of such assets, typically by completing a form on which the member lists the value of its holdings of each of the various categories of qualifying assets. The Banks could modify these existing processes and procedures to include requests for and receipt of the auditor or executive officer certifications that would be required under the rule.

e. Treatment of De Novo Insured Depository Institutions—§ 1263.15

Section 1263.14 of the existing membership regulation addresses the treatment of a ''de novo applicant,'' which it defines as an insured depository institution chartered less than three years prior to the date it applies for Bank membership. The existing regulation deems each de novo applicant to be in compliance with the ''duly organized,'' ''subject to inspection and regulation,'' ''financial condition,'' and ''character of management'' eligibility requirements, which reflects the fact that the chartering entity and the federal deposit insurer would have evaluated those areas in connection with granting the charter and approving the de novo insured depository institution for deposit insurance. The existing regulation also allows a de novo applicant to satisfy the ''makes long-term home mortgage loans'' requirement by providing a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans.

As required by statute, existing § 1263.14 also deems a de novo applicant to which the ''10 percent'' requirement applies and that has been in operation for less than one year to be in ''conditional compliance'' with that requirement at the time of application, and grants the institution ''conditional

membership'' until the institution reaches the one-year anniversary of its commencement of operations. At that point, if the institution provides evidence acceptable to the Bank that it holds at least 10 percent of its assets in residential mortgage loans, it is considered to be in full compliance with the ''10 percent'' requirement and its membership status ceases to be conditional. If the institution is unable to provide such evidence, its conditional membership is terminated and its membership stock is redeemed in accordance with the procedures specified in that section.

Similarly, existing § 1263.14 allows any de novo applicant that has not yet received its first CRA performance evaluation to achieve conditional compliance with the ''home financing policy'' requirement by providing a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community. Again, the existing regulations grant the institution ''conditional membership'' until the institution receives its first CRA evaluation. If the institution receives a ''Satisfactory'' or better rating on its first CRA evaluation, it is deemed to be in full compliance with the ''home financing policy'' requirement. If it fails to achieve a ''Satisfactory'' rating on that evaluation, it is considered to be out of compliance (unless that presumption is rebutted as specified in the regulation) and its conditional membership is terminated.

The proposed rule would significantly revise several of the provisions relating to de novo insured depository institutions and would replace them with a new section, to be designated as § 1263.15. To make clear that the time-limited exceptions for entities formed within the preceding three years apply only to insured depository institutions (as is the case in the existing regulation), proposed § 1263.15 would refer throughout to a ''de novo insured depository institution,'' instead of shortening that term to ''de novo applicant'' as existing § 1263.14 does. As is the case with the existing membership regulation, the proposed rule would not modify the membership eligibility requirements in any way for recently formed insurance company or CDFI applicants or members.

Proposed § 1263.15(a) would retain the substance of the existing regulation by deeming a de novo insured depository institution applicant to be in compliance with the ''duly organized,'' ''subject to inspection and regulation,'' ''financial condition,'' and ''character of management'' requirements. Like the existing regulation, proposed § 1263.15(b)(1) would also deem such a de novo applicant to have initially satisfied the ''makes long-term home mortgage loans'' requirement by providing a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans. Because the proposed rule would separately require all members to comply with the ''makes long-term home mortgage loans'' requirement on an ongoing basis, however, the period of time during which a de novo insured depository institution could rely on this presumed compliance would be limited. Proposed § 1263.15(b)(2) would allow a de novo insured depository institution to rely on the presumptive compliance provision only until it files with its regulator its first year-end regulatory financial report following the one year anniversary of its attaining membership. For example, if a de novo insured depository institution were to become a member in November 2014, the period of initial compliance would end when the regulatory financial report for December 2015 became available to the Bank. For de novo insured depository institutions becoming members earlier in 2014, the period of initial compliance also would end when the regulatory financial report for December 2015 became available. Although this period of initial compliance may vary from institution to institution, depending on the date of membership, it will be at least one year for all de novo insured depository institutions.

Once the de novo insured depository institution files its first year-end regulatory financial report following the one year anniversary of the date it became a member, the rule would require a Bank to determine the member's compliance with the ''makes long-term home mortgage loans'' one percent asset ratio standard based on the amount of home mortgage loans and total assets held by that member at the end of the year covered by that call report. At that point, the Bank would not determine the member's compliance with the asset ratio based on three year averages as it would be required to do for other members, even if the member actually had three or more years of financial data available. In the following year, the Bank would determine compliance for that member based on averages from the two preceding year-ends. In subsequent years, the de novo provisions would cease to apply and the member would be treated in the same manner as all other members—*i.e.,* the Bank would assess its compliance based on rolling three year averages as provided in proposed § 1263.9(b). If a member that had been deemed to be in compliance with the ''makes long-term home mortgage loans'' requirement under the de novo provisions of § 1263.15(b)(1) later fails to meet the requirements of § 1263.9(b), modified as described, it would become subject to the same sanctions and procedures as any other member that fails to comply with the ''makes long-term home mortgage loans'' requirement.

With respect to the ''10 percent'' requirement, the proposed rule would parallel the existing rule, which implements a statutory provision allowing de novo insured depository institutions up to one year from the date that they commence their business operations to comply with that requirement. Thus, proposed § 1263.15(c) would deem a de novo insured depository institution to be in compliance with the ''10 percent'' requirement at the time of application and thereafter, until one year after the institution commenced its operations. Subsequently, the rule would require that the Bank determine compliance for that member as specified in § 1263.10, which addresses compliance for all other institutions to which the ''10 percent'' requirement applies. Similar to its treatment of de novo insured depository institutions' compliance with the ''makes long-term home mortgage loans'' requirement, the rule would permit the Bank to determine compliance based on the actual number of year-end regulatory financial reports filed by the member since commencing its operations, for those cases in which a member had not yet filed three year-end regulatory financial reports by the time that it became subject to proposed § 1263.10.

Although worded somewhat differently than existing § 1263.14(d), proposed § 1263.15(d) would treat the compliance of a de novo insured depository institution with the ''home financing policy'' requirement in the same manner as the existing regulation. Thus, under both the existing regulation and the proposed rule a Bank may conditionally approve a membership application from a de novo insured depository institution based on the applicant's written justification, but that approval will become null and void if the member's first CRA performance evaluation is either ''Needs to Improve'' or ''Substantial Non-Compliance.''

Proposed § 1263.15(e) provides that a de novo insured depository institution member that is deemed to have

complied with the eligibility requirements for membership as provided under § 1263.15 and that achieves membership on that basis, is subject to all regulations applicable to members generally, including those relating to stock purchase requirements and advances or collateral, notwithstanding the possibility that its membership may be conditional for some period of time. It further provides that if a de novo insured depository institution's conditional membership is terminated due to a failure to comply with the post-membership eligibility requirements of proposed § 1263.15, then the Bank must liquidate any outstanding indebtedness and redeem or repurchase its capital stock as it would for any other member in accordance with § 1263.29. The substance of this provision is similar to provisions in the existing regulation, which requires compliance with stock purchase requirements, advances regulations, and redemptions or repurchases of Bank capital stock.

f. Financial Condition of CDFIs and Insurance Companies—§ 1263.17

The proposed rule would redesignate § 1263.16 of the existing regulation, which governs the application of the ''financial condition'' requirement of § 1263.4(a)(4) to insurance company and certain CDFI applicants, as § 1263.17. As mentioned above, existing § 1263.6(a)(4) provides that, in order to be eligible for Bank membership, an institution's financial condition must be ''such that advances may be safely made to it.'' The Bank Act applies this ''financial condition'' requirement only to insured depository institutions that were not Bank members on January 1, 1989.[45] However, both FHFA and the Finance Board have applied this requirement by regulation to all institutions, including insurance companies, as a matter of safety and soundness.[46] This approach would be carried over in the proposed rule.

Under existing § 1263.16(a), an insurance company applicant is deemed to meet the ''financial condition'' requirement if the Bank determines, based on the information contained in the applicant's most recent regulatory financial report, that it meets all of its minimum statutory and regulatory capital requirements and, in addition, meets all applicable capital standards established by the NAIC, regardless of whether those NAIC standards have been adopted by the state in which the company is subject to regulation.[47] The proposed rule would carry forward those requirements, but would also require a Bank to review an insurance company's most recent audited financial statements and to determine that its financial condition is such that the Bank can safely make advances to it before that applicant may be deemed to meet the ''financial condition'' requirement. Proposed § 1263.17(a)(2) would require that the Bank make the latter determination based upon audited financial statements prepared in accordance with generally accepted accounting principles (GAAP), if available. If no such financial statements are available, the proposed rule would permit a Bank to use financial statements prepared in accordance with statutory accounting principles.

Under the existing regulation, the standards that an insured depository institution must meet in order for a Bank to determine that it complies with the ''financial condition'' requirement are more robust than those that apply to insurance companies. For insured depository institution applicants, a Bank must examine multiple sources of information and, in the case of applicants that have not received a regulatory examination rating of ''1'', to determine from those sources whether the applicant has met particular financial metrics.[48] FHFA is considering adding additional components to the ''financial condition'' requirement for insurance companies that are analogous to those that currently apply to insured depository institutions. The agency requests comments on what type of metrics or other criteria would be appropriate indicators that an insurance company is in a financial condition such that advances may be safely made to it and how such metrics or benchmarks should reflect the business models and risks insured by different types of insurance companies.

Existing § 1263.16(b), which sets forth the criteria for deemed compliance with the ''financial condition'' requirement for CDFIs other than CDFI credit unions, would be retained without change as § 1263.17(b) under the proposed rule.

g. Determining Appropriate District for Bank Membership—§ 1263.19

The proposed rule would redesignate existing § 1263.18, which sets forth standards applicable to determining the appropriate Bank district for membership, as § 1263.19. Apart from the revisions noted below, the substance of the proposed rule would be the same as that of the existing regulation. Existing § 1263.18(a)(1) implements section 4(b) of the Bank Act by providing that an institution may become a member only of the Bank of the district in which the institution's ''principal place of business'' is located.[49] The proposed rule would revise the existing provision slightly to state that an institution ''may be a

[45] *See* 12 U.S.C. 1424(a)(2)(B).

[46] *See* 58 FR 43522, 43531–43534 (1993) (discussion in preamble to Finance Board's first post-FIRREA final rule on Bank Membership of the agency's decision to apply the requirements of Bank Act § 4(a)(2)(B) to insurance companies, as well as insured depository institutions).

[47] As explained by the Finance Board when it first adopted this provision in 1996, ''[w]hile not all states have yet adopted the NAIC capital standards, the Finance Board believes these are a useful measure of an insurance company's financial condition.'' *See* 61 FR 42531, 42540 (Aug. 16, 1996). For example, the NAIC adopted the most recent version of its Risk-Based Capital (RBC) for Insurers Model Act in 2011. As of January 2014, only 14 out of 56 states and territories had adopted RBC requirements that were substantially similar to those in the 2011 version of the RBC for Insurers Model Act. Section 1263.16(a) requires a Bank to determine that an insurance company applicant meet the standards set forth in the Model Act, even if the applicant is subject to regulation in one of the 42 jurisdictions that has not adopted those standards. In those jurisdictions, the Bank is also required to determine that the applicant meets the capital standards that have actually been adopted.

[48] Existing § 1263.11 enumerates the materials that a Bank must review when considering whether an insured depository institution or CDFI credit union meets the ''financial condition'' requirement and sets forth the financial benchmarks that such applicants must meet in order to be deemed to meet that requirement. For those types of applicants, the regulation generally requires a Bank to review: (1) Regulatory financial reports for the last six calendar quarters and three year-ends; (2) the most recent audited financial statements, prepared in accordance with GAAP (if available); (3) the most recent available regulatory examination report; (4) a report prepared by the Bank or applicant on any outstanding enforcement actions against the applicant; and (5) any other relevant information concerning the applicant that comes to the Bank's attention. *See* 12 CFR 1263.11(a). A depository institution or CDFI credit union will be deemed to meet the ''financial condition'' requirement if it meets all of its minimum statutory and regulatory capital requirements as reported in its most recent quarter-end regulatory financial report and its most recent composite regulatory examination rating (which must have been received within the past two years) was ''1''. It may still be deemed to comply with the ''financial condition'' requirement if its examination rating was ''2'' or ''3'' so long as: (A) *its* adjusted net income was positive in four of the six most recent calendar quarters; (B) *its* nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter; and (C) *its* ratio of allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during four of the six most recent calendar quarters. *See* 12 CFR 1263.11(b). Section 1263.11 would be redesignated as § 1263.12 under the proposed rule, but would otherwise remain unchanged.

[49] Section 1263.18(a)(2) of the existing rule implements an alternative provided by section 4(b) of the Bank Act, which allows an institution to become a member of the Bank of a district adjoining the one in which the institution maintains its principal place of business, but only if that is demanded by convenience and approved by FHFA. *See* 12 U.S.C. 1424(b).

member,'' rather than ''may become a member'' only of the Bank of the district in which the institution's principal place of business is located. FHFA and its predecessor agencies have consistently construed section 4(b) as prohibiting a member of a particular Bank from remaining a member of that Bank after it has relocated or redesignated its principal place of business to another Bank district. The revised provision, which appears as § 1263.19(a)(1) in the proposed rule, would more accurately reflect the manner in which section 4(b) has been applied historically and continues to be applied.

Existing § 1263.18(b) provides that, unless otherwise designated in accordance with the regulation, the ''principal place of business'' of an institution is the state in which it maintains its home office, as so designated in accordance with the laws under which it is organized. Proposed § 1263.19(b) would retain that language regarding the home office, but would add a second component requiring that the institution conduct business operations from the home office in order for that state to be considered as its principal place of business. This proposed revision is intended as a conforming change related to the addition of a new § 1263.19(f) and is explained in greater detail below in the context of the discussion of the latter provision.

Existing § 1263.18(d)(1) deals with transfers of membership from one Bank to another Bank and provides that no such transfer shall take effect until the Banks involved reach an agreement on a method of orderly transfer. The proposed rule would revise this provision, which would appear as § 1263.19(d)(1), to clarify that it applies to instances where a member of one Bank either redesignates or relocates its principal place of business to a state located in another Bank district. A ''redesignation'' of a principal place of business can occur if a member satisfies a three-part test set out in § 1263.18(c) of the current regulation, which would be carried over into the proposed regulation without change as § 1263.19(c). A ''relocation'' of a member's principal place of business would occur if it were to relocate its home office, as identified in its charter, to another state, such as in connection with a corporate reorganization, merger, or acquisition. This change is intended to reflect the two methods by which transfers of membership can occur and is related to the revisions that would be made to § 1263.4(b) of the proposed rule, regarding ''automatic membership'' that can occur as a result of such transfers of a member's principal place of business.

The proposed rule includes a new paragraph § 1263.19(f) that would address how the Banks are to determine the ''principal place of business'' for insurance companies or CDFIs that cannot satisfy the general requirements for determining an institution's principal place of business. Accordingly, the Banks would use this provision only if an institution does not have an actual ''home office'' established under the laws of its chartering statute, or it has such a ''home office'' but does not conduct business operations from that location, or it cannot satisfy the three-part test of proposed § 1263.19(c) for designating its principal place of business.

Section 1263.19(f) would provide that for an insurance company or CDFI that cannot satisfy the general requirements for establishing its principal place of business the Bank shall designate as the principal place of business the geographic location from which the entity actually conducts the predominant portion of its business activities. Banks must make those determinations based on the totality of the circumstances and an assessment of objective factors that indicate the most likely location at which the institution conducts its business, such as the location from which the institution's senior officers direct, control, and coordinate its activities, or the locations from which the institution conducts its business.

For cases in which an insurance company maintains no physical offices of its own and has no employees of its own, which may occur if the company contracts out the actual operation of the insurance business to affiliated insurance companies or to third parties, or if its senior officers are located at multiple locations in different states, the proposed rule would require the Banks to designate the state of domicile as the principal place of business. That provision is intended to address only those narrow situations in which the factors that a Bank might otherwise use to establish the insurance company's principal place of business are absent, *i.e.,* if the company's senior officers are situated in different locations, or it has no physical office buildings or employees of its own. In all such cases, a Bank would have to demonstrate how it determined that the insurance company had no other objective factors—*i.e.,* offices, employees, or senior officers—that would establish one geographic location as the place from which the entity could be deemed to conduct the predominant part of its business operations.

As mentioned above, in a related amendment, the proposed rule would revise § 1263.19(b), which provides that an institution's principal place of business for membership purposes generally is deemed to be its ''home office,'' if designated as such by its charter or articles of organization. The proposal would add to this provision language requiring that an institution also actually conduct business operations from its home office in order for it to be deemed to be its principal place of business. The intent of that revision is to make clear that an institution cannot have a ''principal place of business'' at a particular location without actually conducting some business operations from that location. A mere legal presence, such as a statutory home office or a registered agent's office at which no insurance business is conducted, is not sufficient by itself to constitute a company's principal place of business for Bank membership purposes. This revision should not affect insured depository institution members because the home office that is designated in their charters will typically also be a branch office from which some banking business will be conducted, which would satisfy the revised regulation. FHFA intends that these amendments to the principal place of business regulation would apply prospectively, and thus would not affect any existing Bank members.

FHFA is proposing these revisions to address questions that have arisen about how to determine the principal place of business for insurance companies and CDFIs that may not operate in the state under whose laws they are organized or who do not have a statutorily established home office. In 2012, FHFA issued a regulatory interpretation addressing whether a non-depository institution could establish its principal place of business for Bank membership purposes based solely on its state of incorporation.[50] FHFA opined that the location of an institution's principal place of business is largely a question of fact that Banks should resolve by identifying the geographic location from which the institution actually conducts its principal business operations. Recently, FHFA declined a request to allow the Banks to look solely to the state of domicile to identify the principal place of business for insurance company members.

The regulation and regulatory interpretation reflect a statutory

[50] FHFA Regulatory Interpretation 2012–RI–02 (April 3, 2012).

requirement that an institution may become a member only of the Bank for the district in which the institution has its principal place of business.[51] Because the Bank Act does not define ''principal place of business,'' FHFA may do so, provided that its definition is consistent with the language and purposes of the Bank Act. In determining how broadly it may construe the term ''principal place of business,'' FHFA considered the recent opinion of the United States Supreme Court in *Hertz Corp.* v. *Friend*,[52] which construed that term for purposes of another federal statute.[53] In that case, the Court determined that a corporation's principal place of business would be the location from which its senior officers ''direct, control, and coordinate the corporation's activities.'' Ordinarily, that would be the corporate headquarters, provided that the headquarters actually were used as the center of direction, control, and coordination. In parsing the statutory language, the Court reasoned that the word ''place'' meant that there had to be a single location, and that the word ''principal'' meant that courts should ''pick out the 'main, prominent' or 'leading' place'' of a corporation's business.

FHFA believes that it should construe the Bank Act's reference to a member's ''principal place of business'' in a similar manner to the way that the Supreme Court has construed that term. Thus, in order for an insurance company or CDFI member or applicant for membership to have its ''principal place of business'' at a particular location the institution must actually conduct business at that location and the activities conducted at that location should be greater in some respect than at any of its other business locations. Requiring the Banks to look to the geographic location from which an insurance company or CDFI conducts the predominant portion of its business is consistent with the plain language of the statute as well as with the *Hertz* Court's reasoning.

By comparison, it does not appear that looking solely to an insurance company's state of domicile or a CDFI's state of incorporation would be consistent with that reasoning because it would not ensure that the location so designated as the institution's ''principal place of business'' would in fact be the ''main or prominent'' place from which it conducts its business. That is so because some states' laws allow their insurance companies and other business corporations (which would include CDFIs) to conduct all of their business activities in other states. Because an approach that looks solely to the state of domicile or the state of incorporation to determine ''principal place of business'' would allow for the possibility that an insurance company or CDFI could be deemed to have its *principal place of business* at a location at which it actually has *no place of business,* FHFA does not believe that it can construe the statute that broadly.

h. Other Revisions to Eligibility Provisions in Subpart C

In addition to the major substantive revisions to subpart C that are discussed above, the proposed rule would also make other more minor revisions to a number of other sections dealing with various aspects of the Bank membership eligibility requirements.

The proposed rule would revise both § 1263.7, which implements the ''duly organized'' requirement, and § 1263.8, which implements the ''subject to inspection and regulation'' requirement, to substitute the word ''institution'' for the word ''applicant.'' Those revisions would conform the text of those provisions to that of the provisions implementing the ''makes long-term home mortgage loans'' and ''10 percent'' requirements, both of which refer to ''institutions'' rather than ''applicants'' because they would be applied on an ongoing basis.

The proposed rule would redesignate existing § 1263.11, which implements the ''financial condition'' requirement for insured depository institutions and CDFI credit unions, and existing § 1263.12, which implements the ''character of management'' requirement, as §§ 1263.12 and 1263.13, respectively, but would otherwise leave those sections unchanged. The proposed rule also would redesignate existing § 1263.13, which implements the ''home financing policy'' requirement, as § 1263.14. In addition, the rule would revise that provision to substitute the word ''institution'' for the word ''applicant'' and to substitute the newly defined term ''CRA performance evaluation'' for the more cumbersome phrase ''formal, or if unavailable, informal or preliminary, CRA performance evaluation.'' Under the proposed rule, those modifiers are included in the definition of the term ''CRA performance evaluation'' and, therefore, need not be repeated in the remainder of the rule text.

Section 1263.15 of the existing regulation specifies the manner in which the Banks must apply the ''financial condition,'' ''home financing policy,'' ''makes long-term home mortgage loans,'' and ''10 percent'' requirements to applicants that have recently merged with or acquired another institution. The proposed rule would redesignate that section as § 1263.16 and would also make a number of non-substantive revisions to provide greater clarity, with no change in meaning intended. The existing regulation currently allows a recently combined applicant that has not yet filed a consolidated regulatory financial report to use the pro forma combined financial statements filed with the regulator that approved the merger or acquisition, for purposes of complying with the ''makes long-term home mortgage loans'' and ''10 percent'' requirements. In order to reflect the ongoing nature of those two requirements, the proposed rule would add a sentence to proposed § 1263.16(c) that makes clear that subsequent compliance with those eligibility requirements is to be determined based on the post-merger regulatory financial reports filed by the combined entity.

The proposed rule would redesignate existing § 1263.17, which sets forth rebuttable presumptions to be applied in determining whether an applicant for Bank membership complies with certain statutory and regulatory eligibility requirements, as § 1263.18. The rule would also make certain non-substantive revisions to the text of that section in order to improve clarity, but otherwise would leave it substantively unchanged.

4. Bank Stock Requirements—§§ 1263.20–1263.23

Subpart D of part 1263 currently sets forth certain requirements regarding the purchase and disposition of Bank stock. The proposed rule would repeal several provisions within this subpart that relate to the capital structure of the Banks prior to the enactment of the Financial Services Modernization Act of 1999[54] (hereinafter, the ''Gramm-Leach-Bliley Act'' or ''GLB Act''), which, among other things, amended the Bank

[51] 12 U.S.C. 1424(b). That provision also allows an institution to become a member of a Bank whose district adjoins the Bank district in which the institution's principal place of business is located, but only if ''demanded by convenience'' and approved by FHFA. FHFA is not aware of any institution ever being approved for membership under this provision.

[52] 559 U.S. 77 (2010).

[53] In the *Hertz* case, the Court construed the term ''principal place of business'' as it appears in the federal diversity jurisdiction statute, which provides that a corporation is deemed to be a citizen of the ''State by which it has been incorporated and of the State where it has its principal place of business.'' *See* 28 U.S.C. 1332(c)(1).

[54] Public Law 106–102, 113 Stat. 1338 (Nov. 12, 1999).

Act to require each Bank to establish and operate under a capital plan meeting certain specified standards.[55] Those regulatory provisions no longer have any relevance or effect because all of the Banks are now operating under GLB Act capital plans. The provisions to be repealed are: (1) § 1263.19, which requires Bank capital stock to be sold at par unless the Director has fixed a higher price; (2) portions of § 1263.20 relating to the pre-GLB Act subscription capital requirements; (3) § 1263.21, pertaining to the issuance and form of Bank stock, primarily under the pre-GLB Act regime; and (4) portions of § 1261.22 relating to the redemption of excess shares of pre-GLB Act capital stock. The proposed rule would retain the substance of the remaining provisions of existing subpart D, although those provisions would be organized differently and would be revised to reflect the GLB Act capital provisions more explicitly.

As proposed, § 1263.20(a) would provide that an institution approved for membership shall become a member upon the purchase of the amount of membership stock required under the Bank's capital plan. Paragraph (a) would further provide that any such institution must purchase the required stock within 60 days of the date of the Bank's approval, or that approval will become void. In such a case, the institution would need to re-apply for membership if it still wished to become a Bank member. This would carry over much of the substance of existing provisions that now appear, respectively, in paragraphs (a)(2) and (d) of existing § 1263.20.

Proposed § 1263.20(b) would provide that, after approving an institution for membership and receiving payment in full for the par value of the Bank stock, a Bank shall issue to that institution the amount of capital stock required to be purchased under the Bank's capital plan. A similar provision appears in § 1263.21(a) of the existing regulation. Proposed § 1263.20(c) would carry over the substance of existing § 1263.20(e) by requiring that each Bank report to FHFA information regarding the minimum investment in Bank capital stock made by each new member under the regulation, in accordance with the instructions provided in FHFA's Data Reporting Manual.

Finally, the proposed rule would retain the substance of existing § 1263.22(b)(1), which requires each Bank to calculate annually each member's required minimum holdings for purposes of determining the number of votes that the member may cast in that year's election of directors and sets forth the procedures and timing that each Bank must follow with regard to that calculation. That material would be carried over with some minor textual edits to provide greater clarity, as the sole provision of proposed § 1263.22. Existing § 1263.23, which governs excess Bank stock, would be retained without change.

5. Consolidations Involving Members—§ 1263.24

Existing § 1263.24 governs the membership status of institutions that are the result of a recent business combination either of two or more Bank members or of a Bank member with a non-member. The proposed rule would retain nearly all of the existing text of that section without change, but would revise § 1263.24(b)(5), which addresses the approval of membership for a non-member institution that has absorbed a member of the Bank, to eliminate references to Banks that have not yet adopted a capital plan as required under the GLB Act. As proposed, that provision would provide that, if the application of such a consolidated institution is approved by a Bank, the consolidated institution shall become a member of that Bank upon the purchase of the amount of stock necessary, when combined with any Bank stock acquired from the disappearing member, to satisfy the minimum stock purchase requirements established by the Bank's capital plan. The proposed rule would also delete § 1263.24(d), which addresses approval of stock transfers from a disappearing member to a surviving member, because it implements a provision of the Bank Act that was repealed by the GLB Act.

6. Withdrawal From Membership—§§ 1263.26

Section 1263.26 of the existing regulation governs voluntary withdrawal from Bank membership. Paragraph (d) of that section provides that no member may withdraw from membership unless FHFA certifies that the withdrawal will not cause the Bank system to fail to satisfy its statutory responsibility to fund the interest payments owed on obligations issued by the Resolution Funding Corporation (RefCorp).[56] As of July 2011, the Banks satisfied their obligation to contribute to the debt service on the RefCorp bonds, thereby rendering this provision moot. The proposed rule would therefore delete paragraph (d), but would leave the remainder of § 1263.26 unchanged.

7. Termination of Membership—§§ 1263.27–1263.28

Section 1263.27 of the existing regulation establishes the grounds and procedures for the involuntary termination of an institution's Bank membership, as well as the rights of an institution whose membership is terminated. The proposed rule would retain that section without change.

The proposed rule would add a new § 1263.28, which would specify the consequences of a member's failure to comply with the new ongoing membership eligibility requirements. Proposed § 1263.28(a) provides that any member that remains out of compliance with the ''makes long-term home mortgage loans'' requirement or, if applicable, the ''10 percent'' requirement, for two consecutive calendar years is ineligible to remain a member and must have its membership terminated.

Proposed § 1263.28(b) would establish a process by which a Bank must notify a member of its failure to comply with an eligibility requirement and provide an opportunity for the member to cure its noncompliance. If, when performing the annual calculations to determine its members' compliance with the ''makes long-term home mortgage loans'' and ''10 percent'' requirements, a Bank determines that a member does not comply with either one of those requirements, paragraph (b)(1) would require that the Bank notify the member in writing of that noncompliance, identify the applicable eligibility requirement, and provide the member with the data and calculations that demonstrate its noncompliance. The rule would also require the written notice to explain that the Bank will be required to terminate the institution's membership if it fails to satisfy the particular eligibility requirement for a second consecutive year and to inform the member of the actions it must take to return to compliance by the end of the then-current calendar year so as to prevent the termination of its membership.

Paragraph (b)(2) would require that the Bank keep itself and its non-compliant member abreast of the member's progress toward returning to compliance with the eligibility requirement by calculating the relevant asset ratio on a quarterly basis for the remainder of that year and informing the member of the Bank's assessment of the member's progress toward a return to compliance. Under these provisions, a member would have nearly one year within which to cure its noncompliance, *i.e.,* the noncompliance

[55] *See* 12 U.S.C. 1426.

[56] *See* 12 U.S.C. 1441b(f)(2)(C).

would be identified as part of the Bank's annual compliance assessments and the member would have until the end of that calendar year to come into compliance with the eligibility requirements. Because the proposed rule would require the Banks to assess compliance only once per year, it is possible that the period of noncompliance actually could extend for nearly two years. For example, if the noncompliance is first detected based on a review of the calendar year-end regulatory financial report filed by a member, then it would be possible that the actual noncompliance could have occurred at any point during that calendar year.

Proposed § 1263.28(c) would require a Bank to terminate the membership of any member that had been notified of its failure to comply with one of the ongoing eligibility requirements as of the end of one year and that the Bank has determined remains out of compliance with that requirement as of the end of a second consecutive year. The rule would require the Bank to carry out the termination of membership as provided under § 1263.27, as it would be required to do for any termination of membership for failure to comply with a statutory or regulatory requirement, and to notify the member in writing that its membership has been terminated. FHFA has the authority under section 6(d)(2)(A) of the Bank Act, which sets forth the grounds upon which an institution's Bank membership may be involuntarily terminated, and as regulator of the Banks and administrator of the Bank Act, to adopt a regulation requiring a Bank to terminate the membership of an institution that has demonstrated its ongoing noncompliance with the statutory ''makes long-term home mortgage loans'' or ''10 percent'' eligibility requirements and the regulatory provisions implementing those requirements.

Section 6(d)(2)(A) of the Bank Act provides that the board of directors of a Bank ''may terminate'' the membership of any member institution if, ''subject to the regulations of the Director'' of FHFA, it determines that the member has either: (i) Failed to comply with any provision of the Bank Act or FHFA regulations; or (ii) been determined to be insolvent, or otherwise subject to the appointment of a conservator, receiver, or other legal custodian, by a federal or state authority with regulatory and supervisory responsibility for the member.[57] The use of the word ''may'' indicates that Congress intended to permit a Bank a degree of discretion in deciding when it must terminate an institution's membership, but it does not vest in a Bank unlimited discretion to decide when to exercise that authority, as is evidenced by the accompanying language that a Bank's termination authority is ''subject to regulations of the Director.'' That reservation of authority to the Director of FHFA, as well as accepted rules of statutory construction,[58] allow FHFA to adopt a regulation that specifies the circumstances in which an ongoing violation of the law requires a Bank to exercise its termination authority, which is what the proposed regulation would do. This is appropriate where, as here, the regulatory violation is not of just any provision of the Bank Act or FHFA regulations, but of the very regulation that defines eligibility for membership, the purpose of which would be defeated if membership were allowed to continue.

By allowing for a one-year period within which to cure a violation of these eligibility requirements, the proposed rule recognizes that Congress did not mandate an immediate termination of membership for any violation of the Bank Act or FHFA regulations. The proposed rule contemplates that during that cure period the Banks would work with any noncompliant members to come back into compliance with those requirements. By requiring the Banks to terminate the membership of any institution that has failed, for over a year and after being notified of its noncompliance, to come back into compliance with the eligibility requirements, the proposed rule also recognizes the authority and responsibility of FHFA to take whatever actions are necessary to ensure that the purposes and provisions of the Bank Act are carried out. By setting the boundaries of a Bank's discretion in this fashion, FHFA is giving effect to and acting consistently with the specific provisions of section 6(d)(2)(A) and its general supervisory authorities.

8. Remaining Provisions—§§ 1263.29–1263.32

The proposed rule would retain the remaining provisions of the existing membership regulation without change, with the exception that the cross-reference to § 1263.22(b)(1) found in § 1263.31(d) (which requires each member to provide its Bank annually with the data necessary to calculate its minimum required holdings of Bank stock) would be revised to reflect its redesignation under the proposed rule as § 1263.22.

IV. Consideration of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act requires the Director of FHFA, when promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises (Fannie Mae and Freddie Mac) as they relate to: The Banks' cooperative ownership structure; the mission of providing liquidity to members; the affordable housing and community development mission; their capital structure; and their joint and several liability on consolidated obligations.[59] The Director also may consider any other differences that are deemed appropriate. In preparing this proposed rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the rule is appropriate. FHFA requests comments regarding whether differences related to those factors should result in any revisions to the proposed rule.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) requires that FHFA consider the impact of paperwork and other information collection burdens imposed on the public.[60] Under the PRA and the implementing regulations of the Office of Management and Budget (OMB), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid control number assigned by OMB.[61] FHFA's regulation ''Members of the Federal Home Loan Banks,'' located at 12 CFR part 1263, contains several collections of information that OMB has approved under control number 2590–0003, which is due to expire on December 31, 2016. This proposed rule would add a new information collection requirement, which is described below. As required by the PRA, FHFA has submitted an analysis of the proposed collection of

[57] 12 U.S.C. 1426(d)(2)(A).

[58] As the Court of Appeals for the DC Circuit has explained, '''May' ordinarily connotes discretion, but neither in lay nor legal understanding is the result inexorable. Rather, the conclusion to be reached 'depends on the context of the statute, and on whether it is fairly to be presumed that it was the intention of the legislature to confer a discretionary power or to impose an imperative duty.'" *Thompson* v. *Clifford,* 408 F.2d 154, 158 (D.C. Cir. 1968) (*citations omitted*); *see also Halverson* v. *Slater,* 129 F.3d 180, 188–189 (D.C. Cir. 1997).

[59] 12 U.S.C. 4513(f).

[60] *See* 44 U.S.C. 3507(a) and (d).

[61] *See* 44 U.S.C. 3512(a); 5 CFR 1320.8(b)(3)(vi).

information contained in this proposed rule to OMB for review.[62]

Summary: Existing part 1263 contains four different types of submissions by Bank members or by institutions wishing to become a Bank member: (I) Applications for membership and supporting materials; (II) notices of appeal to FHFA by institutions that have been denied membership by a Bank; (III) requests to withdraw from Bank membership; and (IV) applications for transfer of membership to a different Bank and supporting materials.

This proposed rule would add a fifth information collection requirement to part 1263, but would not alter any of the four existing requirements. As described in section III of the Supplementary Information above, § 1263.11(a)(2) of the proposed rule would require each Bank to determine annually whether each of its members maintains at least one percent of its total assets in home mortgage loans, as would be required by proposed § 1263.9(b). Proposed § 1263.11(a)(2) would also require each Bank to determine annually whether each of its members that is subject to the ''10 percent'' requirement maintains at least 10 percent of its assets in residential mortgage loans, as would be required by proposed § 1263.10(b). Proposed § 1263.11(a)(1) would provide that a Bank must determine whether an applicant maintains those minimum asset ratios at the time it considers that institution's application for Bank membership.

Under the proposed rule, the Banks would in most cases acquire the data necessary to make those determinations from each institution's year-end regulatory financial reports or audited financial statements. In most cases where the data contained in an institution's regulatory financial report or audited financial statements is insufficient to demonstrate that it complies with the applicable asset ratio requirements, proposed § 1263.11(b)(1)(ii) would require the institution (if it wished to become or remain a Bank member) to obtain from its external auditor and provide to the Bank a written certification stating the actual amount of the relevant assets held by the institution on the appropriate dates. Where the institution in question is a CDFI with less than $100 million in assets, proposed § 1263.11(b)(2)(iii) would permit it to provide a written certification from an executive officer instead.

Use: Each Bank would use the information collected under proposed part 1263 to: (a) Determine whether an institution satisfies the statutory and regulatory requirements for Bank membership; (b) process member withdrawals; and (c) process member transfers to a different Bank district. When appropriate, FHFA may use the information collection to determine whether an institution that has been denied membership by a Bank should be permitted to become a member of that Bank.

Respondents: Respondents would be institutions that are Bank members or that are applying for Bank membership.

Annual Burden Estimates: FHFA has analyzed the cost and hour burden for the five facets of the information collection: (1) Membership application process; (2) appeal of membership denial; (3) membership withdrawals; (4) transfer of membership to another Bank district; and (5) certifications regarding compliance with asset ratio requirements. The estimate for the total annual hour burden for all respondents is 3,335 hours. The estimate for the total annual cost burden is $244,548. These estimates are based on the following calculations:

1. Membership Application

FHFA estimates the total annual average number of applicants at 157, with 1 response per applicant. The estimate for the average hours per application is 11.7 hours. The estimate for the annual hour burden for applicants is 1,837 hours (157 applicants × 1 response per applicant × 11.7 hours per response). The estimate for the total annual cost burden to applicants for the membership application process is $135,365.

2. Appeal of Membership Denials

FHFA estimates the total annual average number of appellants at 1, with 1 response per appellant. The estimate for the average hours per application for appeal is 10 hours. The estimate for the annual hour burden for appellants is 10 hours (10 appellants × 1 response per appellant × 10 hours per response). The estimate for the total annual cost burden to applicants for the appeal of membership denial process is $950.

3. Withdrawals From Membership

FHFA estimates the total annual average number of membership withdrawals at 275, with 1 response per applicant. The estimate for the average hours per application is 1.5 hours. The estimate for the annual hour burden for applicants is 413 hours (275 withdrawals × 1 response per applicant × 1.5 hours per response). The estimate for the total annual cost burden to members for withdrawals from membership is $39,188.

4. Transfer of Membership

FHFA estimates the total annual average number of membership transfer requests at 1, with 1 response per applicant. The estimate for the average hours per application is 1.5 hours. The estimate for the annual hour burden for applicants is 1.5 hours (1 transfer × 1 response per applicant × 1.5 hours per response). The estimate for the total annual cost burden to member respondents of the transfer of membership process is $110.

5. Certifications Regarding Compliance With Asset Ratio Requirements

FHFA estimates the total annual hour burden for members and applicants arising from the asset ratio requirements to be 1,073 hours and the total annual cost burden to be $68,935, calculated as set forth below.

FHFA estimates the total annual average number of Bank members and applicants that would keep records to track the asset categories needed to prepare the asset ratio certifications at 330. The estimate for the average annual recordkeeping hours for each member or applicant, including a one-time initial modification of the institution's accounting information system, is 3 hours. The estimate for the annual hour burden for all members and applicants arising from this recordkeeping is 990 hours (330 members or applicants × 3 hours). The estimate for the total annual cost burden to members and applicants of this recordkeeping is $61,050.

FHFA estimates the total annual average number of Bank members and applicants that would submit asset ratio certifications at 165, with 1 submission per institution. The estimate for the average hours per submission is 0.5 hours. The estimate for the annual hour burden for all members and applicants arising from this submission is 83 hours (165 members or applicants × 0.5 hours). The estimate for the total annual cost burden to members and applicants of this submission is $7,885.

Comment Request: FHFA will accept written comments concerning the accuracy of the burden estimates and suggestions for reducing the burden at the address listed above. Comments may also be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for Federal Housing Finance Agency, Room 10102, New Executive Office Building, 725 17th Street NW., Washington, DC 20503; Fax: (202) 395–6974; or Email: *OIRA_Submission@omb.eop.gov.*

[62] *See* 44 U.S.C. 3507(d).

Written comments are requested on: (1) Whether the proposed collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the proposed collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Individuals and organizations may send comments on the proposed information collection requirement by November 12, 2014.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act[63] (RFA) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.[64] FHFA has considered the impact of the proposed rule under the RFA. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small entities because the regulation applies only to the Banks, which are not small entities for purposes of the RFA.

List of Subjects in 12 CFR Part 1263

Federal home loan banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, and under the authority of 12 U.S.C. 4526, FHFA proposes to amend part 1263 of subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

■ 1. Revise part 1263 to read as follows:

PART 1263—MEMBERS OF THE BANKS

Subpart A—Definitions

Sec.
1263.1 Definitions.

Subpart B—Membership Application Process

1263.2 Membership application requirements.
1263.3 Decision on application.
1263.4 Automatic membership.
1263.5 Appeals.

Subpart C—Eligibility Requirements

1263.6 General eligibility requirements.
1263.7 Duly organized requirement.
1263.8 Subject to inspection and regulation requirement.
1263.9 Makes long-term home mortgage loans requirement.
1263.10 Ten percent requirement for certain insured depository institution applicants.
1263.11 Timing of and standards for calculations required under §§ 1263.9 and 1263.10.
1263.12 Financial condition requirement for depository institutions and CDFI credit unions.
1263.13 Character of management requirement.
1263.14 Home financing policy requirement.
1263.15 De novo insured depository institutions.
1263.16 Recent merger or acquisition applicants.
1263.17 Financial condition requirement for insurance company and certain CDFI applicants.
1263.18 Rebuttable presumptions applicable to applicants for Bank membership.
1263.19 Determination of appropriate Bank district for membership.

Subpart D—Stock Requirements

1263.20 Stock purchase.
1263.21 [Reserved].
1263.22 Annual calculation of stock holdings.
1263.23 Excess stock.

Subpart E—Withdrawal, Termination and Readmission

1263.24 Consolidations involving members.
1263.25 [Reserved].
1263.26 Voluntary withdrawal from membership.
1263.27 Involuntary termination of membership.
1263.28 Loss of eligibility for continued membership; opportunity to cure.
1263.29 Disposition of claims.
1263.30 Readmission to membership.

Subpart F—Other Membership Provisions

1263.31 Reports and examinations.
1263.32 Official membership insignia.

Authority: 12 U.S.C. 1422, 1423, 1424, 1426, 1430, 1442, 4511, 4513.

Subpart A—Definitions

§ 1263.1 Definitions.

For purposes of this part:

Adjusted net income means net income, excluding extraordinary items such as income received from, or expense incurred in, sales of securities or fixed assets, reported on a regulatory financial report.

Aggregate unpaid loan principal means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts and similar obligations.

Allowance for loan and lease losses means a specified balance-sheet account held to fund potential losses on loans or leases, which is reported on a regulatory financial report.

Appropriate regulator means:

(1) In the case of an insured depository institution or a CDFI credit union, an appropriate Federal banking agency or appropriate State regulator, as applicable; or

(2) In the case of an insurance company, an appropriate State regulator accredited by the NAIC.

Captive means a company that is authorized under state law to conduct an insurance business, but that does not meet the definition of ''insurance company'' set forth in this section or fall within any other category of institution eligible for membership.

CDFI credit union means a state-chartered credit union that has been certified as a CDFI by the CDFI Fund and that does not have federal share insurance.

CDFI Fund means the Community Development Financial Institutions Fund established under section 104(a) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(a)).

CFI asset cap means $1 billion, as adjusted annually by FHFA, beginning in 2009, to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(i) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(i)) and applicable FHFA regulations.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(ii) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(ii)) and applicable FHFA regulations.

Combination business or farm property means real property for which the total appraised value is attributable to residential, and business or farm uses.

Community development financial institution or CDFI means an institution that is certified as a community development financial institution by the CDFI Fund under the Community Development Banking and Financial

[63] 5 U.S.C. 601, *et seq.*

[64] *See* 5 U.S.C. 605(b).

Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*), other than a bank or savings association insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), a holding company for such a bank or savings association, or a credit union insured under the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*).

Community financial institution or CFI means an institution:

(1) The deposits of which are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(2) The total assets of which, as of the date of a particular transaction, are less than the CFI asset cap, with total assets being calculated as an average of total assets over three years, with such average being based on the institution's regulatory financial reports filed with its appropriate regulator for the most recent calendar quarter and the immediately preceding 11 calendar quarters.

Composite regulatory examination rating means a composite rating assigned to an institution following the guidelines of the Uniform Financial Institutions Rating System (issued by the Federal Financial Institutions Examination Council), including a CAMELS rating or other similar rating, contained in a written regulatory examination report.

Consolidation includes a consolidation, a merger, or a purchase of substantially all of the assets and assumption of substantially all of the liabilities of an entity by another entity.

CRA means the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*).

CRA performance evaluation means, unless otherwise specified, a formal performance evaluation of an institution prepared by its appropriate regulator as required by the CRA or, if such a formal evaluation is unavailable for a particular institution, an informal or preliminary evaluation.

De novo insured depository institution means an insured depository institution the charter of which was approved by its appropriate regulator within the three years prior to the date that the institution applies for Bank membership.

Dwelling unit means a single room or a unified combination of rooms designed for residential use.

Enforcement action means any written notice, directive, order, or agreement initiated by an applicant for Bank membership or by its appropriate regulator to address any operational, financial, managerial or other deficiencies of the applicant identified by such regulator. An ''enforcement action'' does not include a board of directors' resolution adopted by the applicant in response to examination weaknesses identified by such regulator.

Funded residential construction loan means the portion of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property disbursed to the borrower.

Gross revenues means, in the case of a CDFI applicant, total revenues received from all sources, including grants and other donor contributions and earnings from operations.

Home mortgage loan means:

(1) A loan, whether or not fully amortizing, or an interest in such a loan, which is secured by a mortgage, deed of trust, or other security agreement that creates a first lien on one of the following interests in property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years that is renewable, or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property, or in the case of any community financial institution, combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property; or

(2) A security representing:

(i) A right to receive a portion of the cash flows from a pool of long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (1) of this definition; or

(ii) An interest in other securities, all of which meet the requirements of paragraph (2)(i) of this definition.

Insurance company means a company whose primary business is the underwriting of insurance for nonaffiliated persons or entities.

Insured depository institution means an insured depository institution as defined in section 2(9) of the Bank Act, as amended (12 U.S.C. 1422(9)).

Long-term means a term to maturity of five years or greater at the time of origination.

Manufactured housing means a manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Multifamily property means:

(1) Real property that is solely residential and includes five or more dwelling units;

(2) Real property that includes five or more dwelling units combined with commercial units, provided that the property is primarily residential; or

(3) Nursing homes, dormitories, or homes for the elderly.

NAIC means the National Association of Insurance Commissioners.

Nonperforming loans and leases means the sum of the following, reported on a regulatory financial report:

(1) Loans and leases that have been past due for 90 days (60 days, in the case of credit union applicants) or longer but are still accruing;

(2) Loans and leases on a nonaccrual basis; and

(3) Restructured loans and leases (not already reported as nonperforming).

Nonresidential real property means real property that is not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institution buildings or facilities, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property.

One-to-four family property means:

(1) Real property that is solely residential, including one-to-four family dwelling units or more than four family dwelling units if each dwelling unit is separated from the other dwelling units by dividing walls that extend from ground to roof, such as row houses, townhouses or similar types of property;

(2) Manufactured housing if applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four family dwelling units combined with commercial units, provided the property is primarily residential.

Operating expenses means, in the case of a CDFI applicant, expenses for business operations, including, but not limited to, staff salaries and benefits, professional fees, interest, loan loss provision, and depreciation, contained in the applicant's audited financial statements.

Other real estate owned means all other real estate owned (*i.e.,* foreclosed

and repossessed real estate), reported on a regulatory financial report, and does not include direct and indirect investments in real estate ventures.

Regulatory examination report means a written report of examination prepared by the applicant's appropriate regulator, containing, in the case of insured depository institution applicants, a composite rating assigned to the institution following the guidelines of the Uniform Financial Institutions Rating System, including a CAMELS rating or other similar rating.

Regulatory financial report means a financial report that an institution is required to file with its appropriate regulator on a specific periodic basis, including the quarterly call report for commercial banks and savings associations, quarterly or semi-annual call report for credit unions, NAIC's annual or quarterly statement for insurance companies, or other similar report, including such report maintained by the appropriate regulator in an electronic database.

Residential mortgage loan means any one of the following types of loans, whether or not fully amortizing:

(1) A home mortgage loan;

(2) A funded residential construction loan;

(3) A loan secured by manufactured housing whether or not defined by state law as secured by an interest in real property;

(4) A loan secured by a junior lien on one-to-four family property or multifamily property;

(5) A security representing:

(i) A right to receive a portion of the cash flows from a pool of loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of one of paragraphs (1) through (4) of this definition; or

(ii) An interest in other securities, all of which meet the requirements of paragraph (5)(i) of this definition;

(6) A home mortgage loan secured by a leasehold interest, as defined in paragraph (1)(ii) of the definition of ''home mortgage loan,'' except that the period of the lease term may be for any duration; or

(7) A loan that finances one or more properties or activities that, if made by a member, would satisfy the statutory requirements for the Community Investment Program established under section 10(i) of the Bank Act (12 U.S.C. 1430(i)), or the regulatory requirements established for any Community Investment Cash Advance program.

Restricted assets means both permanently restricted assets and temporarily restricted assets, as those terms are used in Financial Accounting Standard No. 117, or any successor publication.

Total assets means the total assets reported on a regulatory financial report or, in the case of a CDFI, the total assets contained in the CDFI's audited financial statements.

Unrestricted cash and cash equivalents means, in the case of a CDFI applicant, cash and highly liquid assets that can be easily converted into cash that are not restricted in a manner that prevents their use in paying expenses, as contained in the applicant's audited financial statements.

Subpart B—Membership Application Process

§ 1263.2 Membership application requirements.

(a) *Application.* Except as otherwise specified in this part, no institution may become a member of a Bank unless it has submitted to that Bank an application that satisfies the requirements of this part. The application shall include a written resolution or certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, of the following:

(1) *Applicant review.* Applicant has reviewed the requirements of this part and, as required by this part, has provided to the best of applicant's knowledge the most recent, accurate, and complete information available; and

(2) *Duty to supplement.* Applicant will promptly supplement the application with any relevant information that comes to applicant's attention prior to the Bank's decision on whether to approve or deny the application, and if the Bank's decision is appealed pursuant to § 1263.5, prior to resolution of any appeal by FHFA.

(b) *Digest.* The Bank shall prepare a written digest for each applicant stating whether or not the applicant meets each of the requirements in §§ 1263.6 to 1263.19, the Bank's findings, and the reasons therefor.

(c) *File.* The Bank shall maintain a membership file for each applicant for at least three years after the Bank decides whether to approve or deny membership or, in the case of an appeal to FHFA, for three years after the resolution of the appeal. The membership file shall contain at a minimum:

(1) *Digest.* The digest required by paragraph (b) of this section.

(2) *Required documents.* All documents required to be filed by an applicant under §§ 1263.6 to 1263.19, including those documents required to establish or rebut a presumption under this part, shall be described in and attached to the digest. The Bank may retain in the file only the relevant portions of the regulatory financial reports required by this part. If an applicant's appropriate regulator requires return or destruction of a regulatory examination report, the date that the report is returned or destroyed shall be noted in the file.

(3) *Additional documents.* Any additional document submitted by the applicant, or otherwise obtained or generated by the Bank, concerning the applicant.

(4) *Decision resolution.* The decision resolution described in § 1263.3(b).

§ 1263.3 Decision on application.

(a) *Authority.* FHFA hereby authorizes the Banks to approve or deny all applications for membership, subject to the requirements of this part. The authority to approve membership applications may be exercised only by a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president, other than an officer with responsibility for business development.

(b) *Decision resolution.* For each applicant, the Bank shall prepare a written resolution duly adopted by the Bank's board of directors, by a committee of the board of directors, or by an officer with delegated authority to approve membership applications. The decision resolution shall state:

(1) That the statements in the digest are accurate to the best of the Bank's knowledge, and are based on a diligent and comprehensive review of all available information identified in the digest; and

(2) The Bank's decision and the reasons therefor. Decisions to approve an application should state specifically that:

(i) The applicant is authorized under the laws of the United States and the laws of the appropriate state to become a member of, purchase stock in, do business with, and maintain deposits in, the Bank to which the applicant has applied; and

(ii) The applicant meets all of the membership eligibility criteria of the Bank Act and this part.

(c) *Action on applications.* The Bank shall act on an application within 60 calendar days of the date the Bank deems the application to be complete. An application is ''complete'' when a Bank has obtained all the information required by this part, and any other information the Bank deems necessary, to process the application. If an application that was deemed complete

subsequently is deemed incomplete because the Bank determines during the review process that additional information is necessary to process the application, the Bank may suspend the 60-day processing period until the Bank again deems the application to be complete, at which time the processing period shall resume. The Bank shall notify an applicant in writing when it deems the applicant's application to be complete, and shall maintain a copy of the notice in the applicant's membership file. The Bank shall notify an applicant whenever it suspends or resumes the 60-day processing period and shall maintain a written record of those notifications in the applicant's membership file. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and FHFA with a copy of the Bank's decision resolution.

§ 1263.4 Automatic membership.

(a) *Automatic membership for certain charter conversions.* An insured depository institution member that converts from one charter type to another automatically shall become a member of the Bank of which the converting institution was a member on the effective date of the conversion, provided that the converted institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are not materially different. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue.

(b) *Automatic membership for transfers.* Any member that relocates its principal place of business to another Bank district or that redesignates its principal place of business to another Bank district pursuant to § 1263.19(c) automatically shall become a member of the Bank of that district upon the purchase of the minimum amount of Bank stock required for membership in that Bank, as required by § 1263.20.

(c) *Automatic membership, in the Bank's discretion, for certain consolidations.*—(1) If a member institution (or institutions) and a nonmember institution are consolidated, and the consolidated institution has its principal place of business in a State in the same Bank district as the disappearing institution (or institutions), and the consolidated institution will operate under the charter of the nonmember institution, on the effective date of the consolidation, the consolidated institution may, in the discretion of the Bank of which the disappearing institution (or institutions) was a member immediately prior to the effective date of the consolidation, automatically become a member of such Bank upon the purchase of the minimum amount of Bank stock required for membership in that Bank, as required by § 1263.20, provided that:

(i) 90 percent or more of the consolidated institution's total assets are derived from the total assets of the disappearing member institution (or institutions); and

(ii) The consolidated institution provides written notice to such Bank, within 60 calendar days after the effective date of the consolidation, that it desires to be a member of the Bank.

(2) The provisions of § 1263.24(b)(4)(i) shall apply, and upon approval of automatic membership by the Bank, the provisions of § 1263.24(c) shall apply.

§ 1263.5 Appeals.

(a) *Appeals by applicants.*—(1) *Filing procedure.* Within 90 calendar days of the date of a Bank's decision to deny an application for membership, the applicant may file a written appeal of the decision with FHFA.

(2) *Documents.* The applicant's appeal shall be addressed to the Deputy Director for Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024, with a copy to the Bank, and shall include the following documents:

(i) *Bank's decision resolution.* A copy of the Bank's decision resolution; and

(ii) *Basis for appeal.* An applicant must provide a statement of the basis for the appeal with sufficient facts, information, analysis, and explanation to rebut any applicable presumptions, or otherwise to support the applicant's position.

(b) *Record for appeal.*—(1) *Copy of membership file.* Upon receiving a copy of an appeal, the Bank whose action has been appealed (appellee Bank) shall provide FHFA with a copy of the applicant's complete membership file. Until FHFA resolves the appeal, the appellee Bank shall supplement the materials provided to FHFA as any new materials are received.

(2) *Additional information.* FHFA may request additional information or further supporting arguments from the appellant, the appellee Bank, or any other party that FHFA deems appropriate.

(c) *Deciding appeals.* FHFA shall consider the record for appeal described in paragraph (b) of this section and shall resolve the appeal based on the requirements of the Bank Act and this part within 90 calendar days of the date the appeal is filed with FHFA. In deciding the appeal, FHFA shall apply the presumptions in this part, unless the appellant or appellee Bank presents evidence to rebut a presumption as provided in § 1263.18.

Subpart C—Eligibility Requirements

§ 1263.6 General eligibility requirements.

(a) *Requirements.* Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, community development financial institution (including a CDFI credit union), or insured depository institution shall be eligible to be a member of a Bank if:

(1) It is duly organized under tribal law, or under the laws of any State or of the United States;

(2) It is subject to inspection and regulation under the banking laws, or under similar laws, of any State or of the United States or, in the case of a CDFI, is certified by the CDFI Fund;

(3) It makes long-term home mortgage loans;

(4) Its financial condition is such that advances may be safely made to it;

(5) The character of its management is consistent with sound and economical home financing; and

(6) Its home financing policy is consistent with sound and economical home financing.

(b) *Additional eligibility requirement for certain insured depository institutions.* In order to be eligible to be a member of a Bank, an insured depository institution that is not a community financial institution and that was not a member of a Bank as of January 1, 1989 also must have at least 10 percent of its total assets in residential mortgage loans.

(c) *Ineligibility.*—(1) *General.* Except as provided in paragraph (c)(2) of this section, an institution that does not satisfy the requirements of this part shall be ineligible to be a member of a Bank.

(2) *Temporary exception for certain members.*—(i) Any captive that was admitted to Bank membership prior to September 12, 2014 may remain a member of its Bank until [DATE FIVE (5) YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE] notwithstanding its failure to meet the definition of ''insurance company'' in § 1263.1, provided that a Bank may not make or renew any advance to such a member:

(A) If after doing so the total outstanding advances to that member would exceed forty (40) percent of the member's total assets; or

(B) If the new or renewed advance has a maturity date later than [DATE FIVE (5) YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE];

(ii) A Bank shall terminate the membership of any captive that has remained a Bank member pursuant to paragraph (c)(2)(i) of this section as of [DATE FIVE (5) YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], as provided under § 1263.27.

§ 1263.7 Duly organized requirement.

An institution shall be deemed to be duly organized, as required by section 4(a)(1)(A) of the Bank Act (12 U.S.C. 1424(a)(1)(A)) and § 1263.6(a)(1), if it is chartered by a State or federal agency as a building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution or, in the case of a CDFI, is incorporated under State or tribal law.

§ 1263.8 Subject to inspection and regulation requirement.

An institution shall be deemed to be subject to inspection and regulation, as required by section 4(a)(1)(B) of the Bank Act (12 U.S.C. 1424 (a)(1)(B)) and § 1263.6(a)(2) if, in the case of an insured depository institution or insurance company, it is subject to inspection and regulation by its appropriate regulator. A CDFI that is certified by the CDFI Fund is not subject to this requirement.

§ 1263.9 Makes long-term home mortgage loans requirement.

(a) *Continuous one percent requirement.* An institution shall be deemed to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act (12 U.S.C. 1424(a)(1)(C)) and § 1263.6(a)(3), if it maintains at least one percent of its total assets in long-term home mortgage loans. This requirement shall apply on a continuous basis to all members.

(b) *Determining compliance.*—(1) In determining whether an institution maintains at least one percent of its total assets in long-term home mortgage loans as required under paragraph (a) of this section, a Bank shall use three-year averages for both the numerator (the amount of the institution's home mortgage loans) and the denominator (the amount of the institution's total assets), with all numbers being determined as of the end of each of the preceding three calendar years.

(2) A Bank shall perform the calculation required under paragraph (b)(1) of this section in conformity with the standards set forth in § 1263.11.

§ 1263.10 Ten percent requirement for certain insured depository institution applicants.

(a) *Continuous ten percent requirement.* An insured depository institution applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) shall be deemed to comply with that requirement if it maintains at least 10 percent of its total assets in residential mortgage loans. This requirement shall apply on a continuous basis to all insured depository institution members that are not community financial institutions and were not members of a Bank as of January 1, 1989.

(b) *Determining compliance.*—(1) In determining whether an institution maintains at least 10 percent of its total assets in residential mortgage loans as required under paragraph (a) of this section, a Bank shall use three-year averages for both the numerator (the amount of the institution's residential mortgage loans) and the denominator (the amount of the institution's total assets), with all numbers being determined as of the end of each of the preceding three calendar years. For purposes of this calculation, any assets used to secure mortgage-backed securities as described in paragraph (5) of the definition of ''residential mortgage loan'' set forth in § 1263.1 shall not be included in the amount of residential mortgage loans held.

(2) Each Bank shall perform the calculation required under paragraph (b)(1) of this section in conformity with the standards set forth in § 1263.11.

§ 1263.11 Timing of and standards for calculations required under §§ 1263.9 and 1263.10.

(a) *Timing of calculations.*—(1) *Applicants.* For applicants, a Bank shall perform the calculations required under § 1263.9(b) and, if applicable, § 1263.10(b) at the time it is considering the institution's application to become a member of the Bank.

(2) *Members.* For members, a Bank shall perform the calculations required under § 1263.9(b) and, if applicable, § 1263.10(b) annually, as soon as practicable after the member's regulatory financial report or, where appropriate, audited financial statements for the preceding year-end becomes available.

(b) *Sources of Data.*—(1) *Insured depository institutions and insurance companies.* For insured depository institutions and insurance companies:

(i) A Bank shall obtain the data necessary to perform the calculations required under §§ 1263.9(b) and 1263.10(b) from the three most recently available year-end regulatory financial reports filed by the institution with its appropriate regulator.

(ii) If the data obtained from the regulatory financial reports for a particular institution do not demonstrate that it meets the one percent requirement of § 1263.9(a) or, if applicable, the 10 percent requirement of § 1263.10(a), then a Bank may accept a written certification from the institution's external auditor that states the actual amount of home mortgage loans or residential mortgage loans, as appropriate, held by the institution as of the end of any or all of the three most recently completed calendar years and may use that data in performing the required calculation for that institution.

(2) *CDFIs.* For CDFIs, other than CDFI credit unions:

(i) A Bank shall obtain the data necessary to perform the calculation required under § 1263.9 from the institution's annual audited financial statements.

(ii) If the audited financial statements do not demonstrate that the CDFI meets the one percent requirement of § 1263.9(a), then a Bank may accept a written certification from the CDFI's external auditor that states the actual amount of total assets and home mortgage loans held by the CDFI as of the end of each of the three most recently completed calendar years, and may use that data in performing the required calculation for that CDFI.

(iii) For any CDFI with average total assets of less than $100 million over the three preceding year-ends, a Bank may use a written certification prepared by an executive officer of the CDFI, in lieu of a certification from the external auditor.

(c) *Agency guidance.* In determining the amount of an institution's home mortgage loans for purposes of the calculation required under § 1263.9, or the amount of an institution's residential mortgage loans for purposes of the calculation required under § 1263.10, a Bank shall follow any guidance issued by FHFA regarding the derivation of data from particular types of regulatory financial reports, including the extent to which particular schedules or line items may be used to determine the amount of an institution's home mortgage loans or residential mortgage loans.

§ 1263.12 Financial condition requirement for depository institutions and CDFI credit unions.

(a) *Review requirement.* In determining whether a building and loan association, savings and loan

association, cooperative bank, homestead association, savings bank, insured depository institution, or CDFI credit union has complied with the financial condition requirements of section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4), the Bank shall obtain as a part of the membership application and review each of the following documents:

(1) *Regulatory financial reports.* The regulatory financial reports filed by the applicant with its appropriate regulator for the last six calendar quarters and three year-ends preceding the date the Bank receives the application;

(2) *Financial statement.* In order of preference—

(i) The most recent independent audit of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the applicant;

(ii) The most recent independent audit of the applicant's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company but not on the applicant separately;

(iii) The most recent directors' examination of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm;

(iv) The most recent directors' examination of the applicant performed by other external auditors;

(v) The most recent review of the applicant's financial statements by external auditors;

(vi) The most recent compilation of the applicant's financial statements by external auditors; or

(vii) The most recent audit of other procedures of the applicant.

(3) *Regulatory examination report.* The applicant's most recent available regulatory examination report prepared by its appropriate regulator, a summary prepared by the Bank of the applicant's strengths and weaknesses as cited in the regulatory examination report, and a summary prepared by the Bank or applicant of actions taken by the applicant to respond to examination weaknesses;

(4) *Enforcement actions.* A description prepared by the Bank or applicant of any outstanding enforcement actions against the applicant, responses by the applicant, reports as required by the enforcement action, and verbal or written indications, if available, from the appropriate regulator of how the applicant is complying with the terms of the enforcement action; and

(5) *Additional information.* Any other relevant document or information concerning the applicant that comes to the Bank's attention in reviewing the applicant's financial condition.

(b) *Standards.* An applicant of the type described in paragraph (a) of this section shall be deemed to be in compliance with the financial condition requirement of section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4), if:

(1) *Recent composite regulatory examination rating.* The applicant has received a composite regulatory examination rating from its appropriate regulator within two years preceding the date the Bank receives the application;

(2) *Capital requirement.* The applicant meets all of its minimum statutory and regulatory capital requirements as reported in its most recent quarter-end regulatory financial report filed with its appropriate regulator; and

(3) *Minimum performance standard*—(i) Except as provided in paragraph (b)(3)(iii) of this section, the applicant's most recent composite regulatory examination rating from its appropriate regulator within the past two years was ''1'', or the most recent rating was ''2'' or ''3'' and, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant satisfied all of the following performance trend criteria—

(A) *Earnings.* The applicant's adjusted net income was positive in four of the six most recent calendar quarters;

(B) *Nonperforming assets.* The applicant's nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter; and

(C) *Allowance for loan and lease losses.* The applicant's ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during four of the six most recent calendar quarters.

(ii) For applicants that are not required to report financial data to their appropriate regulator on a quarterly basis, the information required in paragraph (b)(3)(i) of this section may be reported on a semi-annual basis.

(iii) A CDFI credit union applicant must meet the performance trend criteria in paragraph (b)(3)(i) of this section irrespective of its composite regulatory examination rating.

(c) *Eligible collateral not considered.* The availability of sufficient eligible collateral to secure advances to the applicant is presumed and shall not be considered in determining whether an applicant is in the financial condition required by section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4).

§ 1263.13 Character of management requirement.

(a) *General.* A building and loan association, savings and loan association, cooperative bank, homestead association, savings bank, insured depository institution, insurance company, and CDFI credit union shall be deemed to be in compliance with the character of management requirements of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(5) if the applicant provides to the Bank an unqualified written certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, that:

(1) *Enforcement actions.* Neither the applicant nor any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator;

(2) *Criminal, civil or administrative proceedings.* Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report; and

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant's operations.

(b) *CDFIs other than CDFI credit unions.* A CDFI applicant, other than a CDFI credit union, shall be deemed to be in compliance with the character of management requirement of § 1263.6(a)(5), if the applicant provides an unqualified written certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, that:

(1) *Criminal, civil or administrative proceedings.* Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude in the past three years; and

(2) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers arising within the past three years that are significant to the applicant's operations.

§ 1263.14 Home financing policy requirement.

(a) *Standard.* An institution shall be deemed to be in compliance with the home financing policy requirements of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(6), if the institution has received a CRA rating of ''Satisfactory'' or better on its most recent CRA performance evaluation.

(b) *Written justification required.* An applicant that is not subject to the CRA shall file, as part of its application for membership, a written justification acceptable to the Bank of how and why the applicant's home financing policy is consistent with the Bank System's housing finance mission.

§ 1263.15 De novo insured depository institutions.

(a) *Presumptive compliance.* A de novo insured depository institution applicant shall be deemed to meet the duly organized, subject to inspection and regulation, financial condition, and character of management requirements of §§ 1263.7, 1263.8, 1263.12, and 1263.13, respectively.

(b) *Makes long-term home mortgage loans requirement.*—(1) *Initial compliance.* A de novo insured depository institution applicant shall be deemed to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act (12 U.S.C. 1424(a)(1)(C)) and § 1263.6(a)(3), if it has filed as part of its application for membership a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans.

(2) *Subsequent compliance.* A de novo insured depository institution member that has been deemed to comply with the makes long-term home mortgage loans requirement under paragraph (b)(1) of this section shall be deemed to remain in compliance on that basis until it submits to its appropriate regulator its next year-end regulatory financial report following the one year anniversary of the date it became a member. The Bank shall then determine compliance for that member as specified in § 1263.9, except that the Bank shall base that determination on the actual number of year-end regulatory financial reports the member has filed since the one year anniversary of the date it became a member until three such year-end reports are available.

(c) *10 percent requirement.*—(1) *Initial compliance.* A de novo insured depository institution applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) shall be deemed to comply with that requirement if it commenced business operations less than one year before applying for Bank membership.

(2) *Subsequent Compliance.* A de novo insured depository institution member that was deemed to comply with the 10 percent requirement under paragraph (c)(1) of this section shall be deemed to remain in compliance on that basis until one year after commencing its initial business operations. Subsequently, the Bank shall determine compliance for that member as specified in § 1263.10, except that if the member has not yet filed three year-end regulatory financial reports, the Bank shall base that determination on the actual number of year-end regulatory financial reports the member has filed since commencing its initial business operations.

(d) *Home financing policy requirement.*—(1) *Conditional approval.* A de novo insured depository institution applicant that has not received its first CRA performance evaluation, shall be conditionally deemed to comply with the home financing policy requirement of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(6) if the applicant has filed, as part of its application for membership, a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community.

(2) *Final approval.* A de novo insured depository institution member that has been conditionally deemed to comply with the home financing policy requirement under paragraph (d)(1) of this section shall be deemed to remain in compliance on that basis until it receives its first CRA performance evaluation. If the member receives a CRA rating of ''Satisfactory'' or better on its first CRA performance evaluation and provides written evidence of that rating to the Bank, it shall be deemed to have complied with the home financing policy requirement and its membership approval shall cease to be conditional. If the member receives a rating of ''Needs to Improve'' or ''Substantial Non-Compliance'' on its first CRA performance evaluation, and fails to rebut the presumption of non-compliance with the home financing policy requirement as provided under § 1263.18(f), it shall be deemed to have been out of compliance with the home financing policy requirement and the Bank's conditional approval of the membership application shall be deemed null and void.

(e) *Other rules.* A de novo insured depository institution member that was deemed to have complied with the eligibility requirements for membership by virtue of the alternative requirements of this section shall be subject to all regulations applicable to members generally, including those relating to stock purchase requirements and advances or collateral, notwithstanding the possibility that its membership may be conditional for some period of time. If a de novo insured depository institution's conditional membership is terminated due to a loss of eligibility for failure to comply with the requirements of this section, then the Bank shall liquidate any outstanding indebtedness and redeem or repurchase its capital stock in accordance with § 1263.29.

§ 1263.16 Recent merger or acquisition applicants.

(a) *Financial condition requirement.*—(1) *Regulatory financial reports.* For purposes of § 1263.12(a)(1), an applicant that, as a result of a recent merger or acquisition preceding the date it applies for membership, has not yet filed regulatory financial reports in the name of the combined institution for the last six calendar quarters and the last three calendar year-ends preceding the date it applies for membership, shall provide to the Bank any regulatory financial reports that the applicant has filed in the name of the combined institution with its appropriate regulator.

(2) *Performance trend criteria.* For purposes of § 1263.12(b)(3)(i)(A) to (C), an applicant that, as a result of a recent merger or acquisition preceding the date it applies for membership, has not yet filed combined regulatory financial reports for the last six calendar quarters preceding such date, shall provide pro forma combined financial statements for those calendar quarters in which actual combined regulatory financial reports are unavailable.

(b) *Home financing policy requirement.* For purposes of § 1263.14, an applicant that, as a result of a recent merger or acquisition preceding the date it applies for membership, has not received its first CRA performance evaluation for the combined institution,

shall file as part of its application, a written justification acceptable to the Bank of how and why the applicant's home financing credit policy and lending practices will meet the credit needs of its community.

(c) *Makes long-term home mortgage loans requirement; 10 percent requirement.* For purposes of determining initial compliance with §§ 1263.9 and 1263.10, a Bank may, in its discretion, permit an applicant that, as a result of a recent merger or acquisition preceding the date it applies for membership, has not yet filed a consolidated regulatory financial report as a combined entity, to provide the combined pro forma financial statement for the combined entity that the institutions filed with the regulator that approved the merger or acquisition. Subsequent compliance with these requirements shall be based on the post-merger regulatory financial reports filed by the combined entity.

§ 1263.17 Financial condition requirement for insurance company and certain CDFI applicants.

(a) *Insurance companies.*—(1) An insurance company applicant shall be deemed to meet the financial condition requirement of § 1263.6(a)(4) if the Bank determines:

(i) Based on the information contained in the applicant's most recent regulatory financial report filed with its appropriate regulator, that the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the NAIC; and

(ii) Based on the applicant's most recent audited financial statements, that the applicant's financial condition is such that the Bank can safely make advances to it.

(2) In making this determination required under paragraph (a)(1)(ii) of this section, the Bank shall use audited financial statements of the insurance company applicant that have been prepared in accordance with generally accepted accounting principles, if they are available, or, in their absence, audited financial statements prepared in accordance with statutory accounting principles.

(b) *CDFIs other than CDFI credit unions.*—(1) *Review requirement.* In order for a Bank to determine whether a CDFI applicant, other than a CDFI credit union, has complied with the financial condition requirement of § 1263.6(a)(4), the applicant shall submit, as a part of its membership application, each of the following documents, and the Bank shall consider all such information prior to acting on the application for membership:

(i) *Financial statements.* An independent audit conducted within the prior year in accordance with generally accepted auditing standards by a certified public accounting firm, plus more recent quarterly statements, if available, and financial statements for the two years prior to the most recent audited financial statement. At a minimum, all such financial statements must include income and expense statements, statements of activities, statements of financial position, and statements of cash flows. The financial statement for the most recent year must include separate schedules or disclosures of the financial position of each of the applicant's affiliates, descriptions of their lines of business, detailed financial disclosures of the relationship between the applicant and its affiliates (such as indebtedness or subordinate debt obligations), disclosures of interlocking directorships with each affiliate, and identification of temporary and permanently restricted funds and the requirements of these restrictions;

(ii) *CDFI Fund certification.* The certification that the applicant has received from the CDFI Fund. If the certification is more than three years old, the applicant must also submit a written statement attesting that there have been no material events or occurrences since the date of certification that would adversely affect its strategic direction, mission, or business operations; and

(iii) *Additional information.* Any other relevant document or information a Bank requests concerning the applicant's financial condition that is not contained in the applicant's financial statements, as well as any other information that the applicant believes demonstrates that it satisfies the financial condition requirement of § 1263.6(a)(4), notwithstanding its failure to meet any of the financial condition standards of paragraph (b)(2) of this section.

(2) *Standards.* A CDFI applicant, other than a CDFI credit union, shall be deemed to be in compliance with the financial condition requirement of § 1263.6(a)(4) if it meets all of the following minimum financial standards—

(i) *Net asset ratio.* The applicant's ratio of net assets to total assets is at least 20 percent, with net and total assets including restricted assets, where net assets is calculated as the residual value of assets over liabilities and is based on information derived from the applicant's most recent financial statements;

(ii) *Earnings.* The applicant has shown positive net income, where net income is calculated as gross revenues less total expenses, is based on information derived from the applicant's most recent financial statements, and is measured as a rolling three-year average;

(iii) *Loan loss reserves.* The applicant's ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) is at least 30 percent, where loan loss reserves are a specified balance sheet account that reflects the amount reserved for loans expected to be uncollectible and are based on information derived from the applicant's most recent financial statements;

(iv) *Liquidity.* The applicant has an operating liquidity ratio of at least 1.0 for the four most recent quarters, and for one or both of the two preceding years, where the numerator of the ratio includes unrestricted cash and cash equivalents and the denominator of the ratio is the average quarterly operating expense.

§ 1263.18 Rebuttable presumptions applicable to applicants for Bank membership.

(a) *Rebutting presumptive compliance.* The presumption that an applicant meeting the requirements of §§ 1263.7 to 1263.17 is in compliance with the corresponding eligibility requirements of section 4(a) of the Bank Act (12 U.S.C. 1424(a)) and § 1263.6(a) and (b), may be rebutted, and the Bank may deny membership to an applicant, if the Bank obtains substantial evidence to overcome the presumption of compliance.

(b) *Rebutting presumptive noncompliance.* The presumption that an applicant not meeting a particular requirement of §§ 1263.8, 1263.12, 1263.13, 1263.14, or 1263.17, is not in compliance with the corresponding eligibility requirement of section 4(a) of the Bank Act (12 U.S.C. 1424(a)) and § 1263.6(a) may be rebutted. The applicant shall be deemed to be in compliance with an eligibility requirement, if it satisfies the applicable requirements in this section.

(c) *Presumptive noncompliance by insurance company applicant with ''subject to inspection and regulation'' requirement of § 1263.8.* If an insurance company applicant is not subject to inspection and regulation by an appropriate State regulator accredited by the NAIC, as required by § 1263.8, the applicant or the Bank shall prepare

a written justification that provides substantial evidence acceptable to the Bank that the applicant is subject to inspection and regulation as required by § 1263.6(a)(2), notwithstanding the regulator's lack of NAIC accreditation.

(d) *Presumptive noncompliance with financial condition requirements of §§ 1263.12 and 1263.17.*—(1) *Applicants subject to § 1263.12.* For applicants subject to § 1263.12, in the case of an applicant's lack of a composite regulatory examination rating within the two-year period required by § 1263.12(b)(1), a variance from the rating required by § 1263.12(b)(3)(i), or a variance from a performance trend criterion required by § 1263.12(b)(3)(i), the applicant or the Bank shall prepare a written justification pertaining to such requirement that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 1263.6(a)(4), notwithstanding the lack of rating or variance.

(2) *Applicants subject to § 1263.17.* For applicants subject to § 1263.17, in the case of an insurance company applicant's variance from a capital requirement or standard of § 1263.17(a) or, in the case of a CDFI applicant's variance from the standards of § 1263.17(b), the applicant or the Bank shall prepare a written justification pertaining to such requirement or standard that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 1263.6(a)(4), notwithstanding the variance.

(e) *Presumptive noncompliance with character of management requirement of § 1263.13.*—(1) *Enforcement actions.* If an applicant or any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action. The written analysis shall state each action the applicant or its directors or senior officers are required to take by the enforcement action, the actions actually taken by the applicant or its directors or senior officers, and whether the applicant regards this as substantial compliance with all aspects of the enforcement action.

(2) *Criminal, civil or administrative proceedings.* If an applicant or any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report or, in the case of a CDFI applicant, during the past three years, the applicant shall provide or the Bank shall obtain—

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the proceedings will not likely result in an enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the proceedings will not likely result in an enforcement action or, in the case of a CDFI applicant, that the proceedings will not likely have a significantly deleterious effect on the applicant's operations. The written analysis shall state the severity of the charges, and any mitigating action taken by the applicant or its directors or senior officers.

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* If there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report or, in the case of a CDFI applicant, occurring within the past three years, that are significant to the applicant's operations, the applicant shall provide or the Bank shall obtain—

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§ 1263.12(b)(2) and 1263.17(a); or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in § 1263.12(b)(2) or § 1263.17(a), or the net asset ratio set forth in § 1263.17(b)(2)(i). The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

(f) *Presumptive noncompliance with home financing policy requirements of §§ 1263.14 and 1263.15(d).* If an applicant received a ''Substantial Non-Compliance'' rating on its most recent CRA performance evaluation, or a ''Needs to Improve'' CRA rating on its most recent CRA performance evaluation and a CRA rating of ''Needs to Improve'' or better on any immediately preceding formal CRA performance evaluation, the applicant shall provide or the Bank shall obtain:

(1) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator of the applicant's recent satisfactory CRA performance, including any corrective action that substantially improved upon the deficiencies cited in the most recent CRA performance evaluation(s); or

(2) *Written analysis.* A written analysis acceptable to the Bank demonstrating that the CRA rating is unrelated to home financing, and providing substantial evidence of how and why the applicant's home financing credit policy and lending practices meet the credit needs of its community.

§ 1263.19 Determination of appropriate Bank district for membership.

(a) *Eligibility.*—(1) An institution eligible to be a member of a Bank under the Bank Act and this part may be a member only of the Bank of the district in which the institution's principal place of business is located, except as provided in paragraph (a)(2) of this section. A member shall promptly notify its Bank in writing whenever it relocates its principal place of business to another state and the Bank shall inform FHFA in writing of any such relocation.

(2) An institution eligible to become a member of a Bank under the Bank Act and this part may be a member of the Bank of a district adjoining the district in which the institution's principal place of business is located, if demanded by convenience and then only with the approval of FHFA.

(b) *Principal place of business.* Except as otherwise designated in accordance with this section, the principal place of business of an institution is the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized and from which the institution conducts business operations.

(c) *Designation of principal place of business.*—(1) A member or an applicant for membership may request in writing to the Bank in the district where the institution maintains its home office that a state other than the state in which it maintains its home

office be designated as its principal place of business. Within 90 calendar days of receipt of such written request, the board of directors of the Bank in the district where the institution maintains its home office shall designate a state other than the state where the institution maintains its home office as the institution's principal place of business, provided that, all of the following criteria are satisfied:

(i) At least 80 percent of the institution's accounting books, records, and ledgers are maintained, located or held in such designated state;

(ii) A majority of meetings of the institution's board of directors and constituent committees are conducted in such designated state; and

(iii) A majority of the institution's five highest paid officers have their place of employment located in such designated state.

(2) Written notice of a designation made pursuant to paragraph (c)(1) of this section shall be sent to the Bank in the district containing the designated state, FHFA, and the institution.

(3) The notice of designation made pursuant to paragraph (c)(1) of this section shall include the state designated as the principal place of business and the Bank of which the subject institution is eligible to be a member.

(4) If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c)(1) of this section, then the member or applicant may request in writing that FHFA make the designation.

(d) *Transfer of membership.*—(1) In the case of a member that has designated its principal place of business in accordance with paragraph (c) to a State located in another Bank district, or in the case of a member that has relocated its principal place of business to a State in another Bank district, the transfer of membership from one Bank to another Bank shall not take effect until the Banks involved reach an agreement on a method of orderly transfer.

(2) In the event that the Banks involved fail to agree on a method of orderly transfer, FHFA shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes, but shall not affect voting rights in the year of the transfer and shall not be subject to the provisions on termination of membership set forth in section 6 of the Bank Act (12 U.S.C. 1426) or §§ 1263.26 and 1263.27, nor the restriction on reacquiring Bank membership set forth in § 1263.30.

(f) *Insurance companies and CDFIs.* For an insurance company or CDFI that cannot satisfy the requirements of paragraphs (b) or (c) of this section for designating its principal place of business, a Bank shall designate as the principal place of business the geographic location from which the institution actually conducts the predominant portion of its business activities. Such designations shall be based on the totality of the circumstances of the particular case and shall be evidenced by objective factors, such as the location from which the institution's senior officers direct, control and coordinate its activities, the locations of the offices from which the institution conducts its business, or the locations from which its other officers and employees carry out the business activities. In the case of an insurance company that maintains no physical offices of its own and has no employees of its own, or whose senior officers are situated at multiple locations, a Bank shall designate the state of domicile as the principal place of business for the insurance company. A Bank designating the principal place of business for a member under this provision shall document the bases for its determination in writing and shall include such documentation in the membership digest and application file for the institution.

Subpart D—Stock Requirements

§ 1263.20 Stock purchase.

(a) *Minimum purchase requirement.* An institution that has been approved for membership in a Bank as provided in this part shall become a member of that Bank upon purchasing the amount of stock required under the membership stock purchase provisions of that Bank's capital plan. If an institution fails to purchase the minimum amount of stock required for membership within 60 calendar days after the date on which it is approved for membership, the membership approval shall become void and that institution may not become a member of that Bank until after it has filed a new application and the Bank has approved that application pursuant to the requirements of this part.

(b) *Issuance of stock.* After approving an institution for membership, and in return for payment in full of the par value, a Bank shall issue to that institution the amount of capital stock required to be purchased under the Bank's capital plan.

(c) *Reports.* Each Bank shall report to FHFA information regarding the minimum investment in Bank capital stock made by each new member referred to in paragraph (a) of this section, in accordance with the instructions provided in the Data Reporting Manual.

§ 1263.21 [Reserved]

§ 1263.22 Annual calculation of stock holdings.

A Bank shall calculate annually each member's required minimum holdings of Bank stock using calendar year-end financial data provided by the member to the Bank, pursuant to § 1263.31(d), and shall notify each member of the result. The notice shall clearly state that the Bank's calculation of each member's minimum stock holdings is to be used to determine the number of votes that the member may cast in that year's election of directors and shall identify the state within the district in which the member will vote. A member that does not agree with the Bank's calculation of the minimum stock purchase requirement or with the identification of its voting state may request FHFA to review the Bank's determination. FHFA shall promptly determine the member's minimum required holdings and its proper voting state, which determination shall be final.

§ 1263.23 Excess stock.

(a) *Sale of excess stock.* Subject to the restriction in paragraph (b) of this section, a member may purchase excess stock as long as the purchase is approved by the member's Bank and is permitted by the laws under which the member operates.

(b) *Restriction.* Any Bank with excess stock greater than one percent of its total assets shall not declare or pay any dividends in the form of additional shares of Bank stock or otherwise issue any excess stock. A Bank shall not issue excess stock, as a dividend or otherwise, if after the issuance, the outstanding excess stock at the Bank would be greater than one percent of its total assets.

Subpart E—Withdrawal, Termination and Readmission

§ 1263.24 Consolidations involving members.

(a) *Consolidation of members.* Upon the consolidation of two or more institutions that are members of the same Bank into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of

each disappearing institution shall terminate on the cancellation of its charter. Upon the consolidation of two or more institutions, at least two of which are members of different Banks, into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate upon cancellation of its charter, provided, however, that if more than 80 percent of the assets of the consolidated institution are derived from the assets of a disappearing institution, then the consolidated institution shall continue to be a member of the Bank of which that disappearing institution was a member prior to the consolidation, and the membership of the other institutions shall terminate upon the effective date of the consolidation.

(b) *Consolidation into nonmember.*—(1) *In general.* Upon the consolidation of a member into an institution that is not a member of a Bank, where the consolidated institution operates under the charter of the nonmember institution, the membership of the disappearing institution shall terminate upon the cancellation of its charter.

(2) *Notification.* If a member has consolidated into a nonmember that has its principal place of business in a state in the same Bank district as the former member, the consolidated institution shall have 60 calendar days after the cancellation of the charter of the former member within which to notify the Bank of the former member that the consolidated institution intends to apply for membership in such Bank. If the consolidated institution does not so notify the Bank by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(3) *Application.* If such a consolidated institution has notified the appropriate Bank of its intent to apply for membership, the consolidated institution shall submit an application for membership within 60 calendar days of so notifying the Bank. If the consolidated institution does not submit an application for membership by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(4) *Outstanding indebtedness.* If a member has consolidated into a nonmember institution, the Bank need not require the former member or its successor to liquidate any outstanding indebtedness owed to the Bank or to redeem its Bank stock, as otherwise may be required under § 1263.29, during:

(i) The initial 60 calendar-day notification period;

(ii) The 60 calendar-day period following receipt of a notification that the consolidated institution intends to apply for membership; and

(iii) The period of time during which the Bank processes the application for membership.

(5) *Approval of membership.* If the application of such a consolidated institution is approved, the consolidated institution shall become a member of that Bank upon the purchase of the amount of Bank stock necessary, when combined with any Bank stock acquired from the disappearing member, to satisfy the minimum stock purchase requirements established by the Bank's capital plan.

(6) *Disapproval of membership.* If the Bank disapproves the application for membership of the consolidated institution, the Bank shall require the liquidation of any outstanding indebtedness owed by, and the settlement of all other outstanding business transactions with, the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(c) *Dividends on acquired Bank stock.* A consolidated institution shall be entitled to receive dividends on the Bank stock that it acquires as a result of a consolidation with a member in accordance with applicable FHFA regulations.

§ 1263.25 [Reserved]

§ 1263.26 Voluntary withdrawal from membership.

(a) *In general.*—(1) Any institution may withdraw from membership by providing to the Bank written notice of its intent to withdraw from membership. A member that has so notified its Bank shall be entitled to have continued access to the benefits of membership until the effective date of its withdrawal. The Bank need not commit to providing any further services, including advances, to a withdrawing member that would mature or otherwise terminate subsequent to the effective date of the withdrawal. A member may cancel its notice of withdrawal at any time prior to its effective date by providing a written cancellation notice to the Bank. A Bank may impose a fee on a member that cancels a notice of withdrawal, provided that the fee or the manner of its calculation is specified in the Bank's capital plan.

(2) A Bank shall notify FHFA within 10 calendar days of receipt of any notice of withdrawal or notice of cancellation of withdrawal from membership.

(b) *Effective date of withdrawal.* The membership of an institution that has submitted a notice of withdrawal shall terminate as of the date on which the last of the applicable stock redemption periods ends for the stock that the member is required to hold, as of the date that the notice of withdrawal is submitted, under the terms of a Bank's capital plan as a condition of membership, unless the institution has cancelled its notice of withdrawal prior to the effective date of the termination of its membership.

(c) *Stock redemption periods.* The receipt by a Bank of a notice of withdrawal shall commence the applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock held by that member that is not already subject to a pending request for redemption. In the case of an institution, the membership of which has been terminated as a result of a merger or other consolidation into a nonmember or into a member of another Bank, the applicable stock redemption periods for any stock that is not subject to a pending notice of redemption shall be deemed to commence on the date on which the charter of the former member is cancelled.

§ 1263.27 Involuntary termination of membership.

(a) *Grounds.* The board of directors of a Bank may terminate the membership of any institution that:

(1) Fails to comply with any requirement of the Bank Act, any regulation adopted by FHFA, or any requirement of the Bank's capital plan;

(2) Becomes insolvent or otherwise subject to the appointment of a conservator, receiver, or other legal custodian under federal or state law; or

(3) Would jeopardize the safety or soundness of the Bank if it were to remain a member.

(b) *Stock redemption periods.* The applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock owned by a member and not already subject to a pending request for redemption, shall

commence on the date that the Bank terminates the institution's membership.

(c) *Membership rights.* An institution whose membership is terminated involuntarily under this section shall cease being a member as of the date on which the board of directors of the Bank acts to terminate the membership, and the institution shall have no right to obtain any of the benefits of membership after that date, but shall be entitled to receive any dividends declared on its stock until the stock is redeemed or repurchased by the Bank.

§ 1263.28 Loss of eligibility for continued membership; opportunity to cure.

(a) *Loss of membership.* A member that fails to remain in compliance with the ''makes long-term home mortgage loans'' requirement of § 1263.9 or, if applicable, the ''10 percent'' requirement of § 1263.10 as of the end of two consecutive calendar years shall become ineligible to remain a member of a Bank and shall have its membership terminated in accordance with this section.

(b) *Initial noncompliance.* If, when making its annual determinations of its members' ongoing compliance with §§ 1263.9 and 1263.10 that are required under § 1263.11, a Bank determines that a member has failed to comply with an applicable requirement as of the end of the most recent calendar year, the Bank shall:

(1) Provide the member with a written notice that:

(i) Informs the member that it has failed to satisfy an eligibility requirement for remaining a member of the Bank;

(ii) Identifies the eligibility requirements that the member has failed to meet and provides the data and calculations on which the Bank based its determination;

(iii) Describes the actions that the member must take in order to comply with the eligibility requirements and prevent the loss of its membership; and

(iv) Clearly states that the Bank will be required to terminate the institution's membership if it does not come into compliance with the particular eligibility requirement as of the end of the then-current calendar year; and

(2) Monitor the member's progress toward meeting the eligibility requirement by calculating the relevant asset ratio on a quarterly basis for the remainder of that year, using the data sources specified in § 1263.11, and promptly notify the member of the Bank's assessment of the member's compliance with the eligibility requirements for each of those calendar quarters.

(c) *Failure to cure noncompliance.* If, when making its annual determinations of its members' ongoing compliance with §§ 1263.9 and 1263.10 that are required under § 1263.11, a Bank determines that a member that has been notified under paragraph (b) of this section that it has failed to comply with an applicable eligibility requirement as of the end of the preceding calendar year has also failed to comply with that eligibility requirement as of the end of a second consecutive year, the Bank shall terminate the membership of that institution for failure to comply with the statutory and regulatory eligibility requirements for membership, as provided under § 1263.27, and shall notify the member in writing of its action.

§ 1263.29 Disposition of claims.

(a) *In general.* If an institution withdraws from membership or its membership is otherwise terminated, the Bank shall determine an orderly manner for liquidating all outstanding indebtedness owed by that member to the Bank and for settling all other claims against the member. After all such obligations and claims have been extinguished or settled, the Bank shall return to the member all collateral pledged by the member to the Bank to secure its obligations to the Bank.

(b) *Bank stock.* If an institution that has withdrawn from membership or that otherwise has had its membership terminated remains indebted to the Bank or has outstanding any business transactions with the Bank after the effective date of its termination of membership, the Bank shall not redeem or repurchase any Bank stock that is required to support the indebtedness or the business transactions until after all such indebtedness and business transactions have been extinguished or settled.

§ 1263.30 Readmission to membership.

(a) *In general.* An institution that has withdrawn from membership or otherwise has had its membership terminated and which has divested all of its shares of Bank stock, may not be readmitted to membership in any Bank, or acquire any capital stock of any Bank, for a period of five years from the date on which its membership terminated and it divested all of its shares of Bank stock.

(b) *Exceptions.* An institution that transfers membership between two Banks without interruption shall not be deemed to have withdrawn from Bank membership or had its membership terminated.

Subpart F—Other Membership Provisions

§ 1263.31 Reports and examinations.

As a condition precedent to Bank membership, each member:

(a) Consents to such examinations as the Bank or FHFA may require for purposes of the Bank Act;

(b) Agrees that reports of examinations by local, state or federal agencies or institutions may be furnished by such authorities to the Bank or FHFA upon request;

(c) Agrees to give the Bank or the appropriate Federal banking agency, upon request, such information as the Bank or the appropriate Federal banking agency may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members;

(d) Agrees to provide the Bank with calendar year-end financial data each year, for purposes of making the calculation described in § 1263.22; and

(e) Agrees to provide the Bank with copies of reports of condition and operations required to be filed with the member's appropriate Federal banking agency, if applicable, within 20 calendar days of filing, as well as copies of any annual report of condition and operations required to be filed.

§ 1263.32 Official membership insignia.

Members may display the approved insignia of membership on their documents, advertising and quarters, and likewise use the words ''Member Federal Home Loan Bank System.''

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2014–21114 Filed 9–11–14; 8:45 am]

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FEDERAL REGISTER

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No. 177 September 12, 2014

Part IV

The President

Proclamation 9164—Twentieth Anniversary of the Violence Against Women Act

Federal Register
Vol. 79, No. 177
Friday, September 12, 2014

Presidential Documents

Title 3—

The President

Proclamation 9164 of September 9, 2014

Twentieth Anniversary of the Violence Against Women Act

By the President of the United States of America

A Proclamation

Twenty years ago, our Nation came together to declare our commitment to end violence against women. The Violence Against Women Act (VAWA), written by then United States Senator Joe Biden and signed into law on September 13, 1994, changed the way our country responds to domestic abuse and sexual assault. At a time when many considered domestic abuse to be a private family matter and victims were left to suffer in silence, this law enshrined a simple promise: every American should be able to pursue her or his own measure of happiness free from the fear of harm. On the anniversary of this landmark legislation, we rededicate ourselves to strengthening the protections it first codified, and we reaffirm the basic human right to be free from violence and abuse.

The Violence Against Women Act created a vital network of services for victims. It expanded the number of shelters and rape crisis centers across America and established a national hotline. The law improved our criminal justice system and provided specialized training to law enforcement, helping them better understand the unique challenges victims face. It spurred new State laws and protections and changed the way people think about domestic abuse; today, more women are empowered to speak out, and more girls grow up aware of their right to be free from abuse.

Last year, I was proud to renew our pledge to our mothers and daughters by reauthorizing VAWA and extending its protections—because no matter where you live or who you love, everybody deserves security, justice, and dignity. These new protections make Native American communities safer and more secure and help ensure victims do not face discrimination based on sexual orientation or gender identity when they seek assistance. They provide our law enforcement officials with better tools to investigate rape and increase access to housing so no woman has to choose between a violent home and no home at all. And my Administration continues to build on the foundation of this legislation, launching new initiatives to reduce teen dating violence and to combat sexual assault on college campuses.

VAWA has provided hope, safety, and a new chance at life for women and children across our Nation. With advocates, law enforcement officers, and courageous women who have shared their stories joined in common purpose, our country has changed its culture; we have made clear to victims that they are not alone and reduced the incidence of domestic violence. But we still have more work to do. Too many women continue to live in fear in their own homes, too many victims still know the pain of abuse, and too many families have had to mourn the loss of their loved ones. It has to end—because even one is too many. For as long as it takes, my Administration will keep pushing to make progress on our military bases, in our homes, at schools, and across our country.

Two decades later, a tireless effort has yielded a better, stronger Nation. And on the anniversary of the Violence Against Women Act, we continue to work toward a more perfect society, where the dreams of our mothers

and daughters are not limited by fear and where every person can feel safe.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the Twentieth Anniversary of the Violence Against Women Act. I call upon men and women of all ages, communities, organizations, and all levels of government, to work in collaboration to end violence against women.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

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