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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2016–0034]

Notification of Decision To Authorize the Importation of Pummelo From Thailand Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, Department of Agriculture (USDA).

ACTION: Final rulemaking action; notification of decision to import.

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of fresh pummelo fruit from Thailand. Based on the findings of a pest risk analysis, which we made available to the public for review and comment, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh pummelo fruit from Thailand.

DATES: The articles covered by this notification may be authorized for importation after November 10, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia A. Ferguson, M.S., Senior Regulatory Policy Coordinator, Imports, Regulations, and Manuals, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart L–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

On March 29, 2018, we published in the **Federal Register** (83 FR 13433–13436, Docket No. APHIS–2016–0034) a proposal [1] to amend the regulations by allowing for the importation of commercially produced fresh pummelo (*Citrus maxima* (Berm.) Merr.) fruit from Thailand into the continental United States.

We solicited comments concerning our proposal for 60 days ending May 29, 2018. We received seven comments by that date. They were from producers, industry groups, private citizens, and a State department of agriculture. They are discussed below by topic.

Comments on the Pest Risk Assessment

We prepared a pest risk assessment and a risk management document (RMD) in connection with our proposal. Based on the findings of the pest risk assessment, we determined that measures beyond standard port of entry inspection would be required to mitigate the risks posed by these pests. These measures are identified in the RMD and were used as the basis for the requirements included in the proposed rule.

One commenter, from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, stated that U.S. stakeholders from those areas potentially affected by any pest or disease outbreak from imported commodities should be invited to participate in site visits prior to the issuance of any proposals such as the one finalized by this document.

APHIS is committed to a transparent process and an inclusive role for stakeholders in our risk analysis process. However, since this comment relates to the structure of APHIS' overall risk analysis process, and not to the importation of fresh pummelo fruit from Thailand, it is outside the scope of the current action.

The same commenter observed that the pest risk assessment as a whole is based upon the assumption that the required post-harvest irradiation treatment may occur either in Thailand or upon arrival in the United States. The commenter went on to point out an inconsistency in the way in which we assessed the phytosanitary risk associated with Tephritidae species (*Bactrocera correcta* Bezzi, *Bactrocera cucurbitae* Coquillett, *Bactrocera dorsalis* Hendel, *Bactrocera papayae* Drew & Hancock, *Bactrocera tau* Walker, and *Monacrostichus citricola* Bezzi in the list of actionable pests). The commenter pointed out that the likelihood of these pests surviving post-harvest processing before shipment was rated as negligible due to the required irradiation treatment, but that the likelihood of the pests surviving transport and storage conditions of the consignment was marked not applicable, which indicated to the commenter that the risk associated with Tephritidae species was analyzed using the assumption that the fresh pummelo fruit would be treated with irradiation in Thailand only and not upon arrival in the United States after transport. The commenter recommended that the analysis be updated with any risk associated transit and storage of those shipments treated upon arrival or that it be altered to specify that risk was considered based on the presumption of irradiation treatment in Thailand only.

We agree with the commenter's point and have updated the pest risk assessment to reflect the risk presented by pests potentially surviving transport and storage conditions of the consignment in the event that post-harvest irradiation treatment is not performed in Thailand. This change may be found on page 23 of the updated pest risk assessment.

Comments on Phytosanitary Issues

We proposed to require that fresh pummelo fruit from Thailand be subject to a systems approach that includes irradiation treatment, packinghouse processing requirements, and port of entry inspection. We also proposed that the fruit be imported only in commercial consignments and be accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Thailand. One commenter said that these measures are not 100 percent effective in preventing the entry of

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov* and enter APHIS–2016–0034 in the Search field.

actionable pests. Another commenter requested that fresh pummelo fruit from Thailand not be allowed into the State of Florida and other ports of entry south of the 39th parallel given that the climate in those areas is conducive to the establishment of the listed pests and the State of Florida's history of damaging incursions by invasive pests associated with the importation of foreign commodities.

We have determined, for the reasons described in the RMD that accompanied the proposed rule, that the measures specified in the RMD will effectively mitigate the risk associated with the importation of fresh pummelo fruit from Thailand. The commenters did not provide any evidence suggesting that the mitigations are not effective. Therefore, we are not taking the action requested by the commenters.

The pest risk assessment identified 21 actionable pests that could be introduced into the United States in consignments of fresh pummelo fruit from Thailand. We provided a list of those pests in the proposed rule and its supporting documentation. One commenter said that the proposed rule did not mention invasive species, focusing only on actionable pests. The commenter argued that we should provide a full list of potentially invasive species associated with this action. Another commenter argued that the pest risk assessment we prepared was too narrow in scope, and should take into account the potential adverse effects of actionable pests on all known and potential hosts of those pests.

The term ''actionable pest'' includes those species known to be invasive, but also includes a larger group of pests since a species does not have to be recognized as invasive in order to cause harm. Actionable pests include quarantine pests, regulated non-quarantine pests, pests considered for or under official control, and pests that require evaluation for regulatory action. The wider scope described by the second commenter was therefore built into the pest risk assessment and RMD. Actionable pests in this case are those known to be associated with fresh pummelo fruit and present in Thailand.

Fresh pummelo fruit from Thailand will be required to be treated with a minimum absorbed irradiation dose of 400 Gy in accordance with § 305.9 of the phytosanitary treatment regulations in 7 CFR part 305. This is the established generic dose for all insect pests except pupae and adults of the order Lepidoptera. A commenter cited the presence of three Lepidopteran pests (*Citripestis sagittiferella* Moore, *Prays citri* Millière, and *Prays endocarpa* Meyrick) in the list of actionable pests as an indication that the phytosanitary risk associated with the importation of fresh pummelo fruit from Thailand is too high.

The systems approach includes other phytosanitary procedures designed to provide protection from pests against which irradiation is not effective. In addition, irradiation in conjunction with other mitigations against Lepidopteran pests can provide phytosanitary protection since it is lethal to larvae, tends to prevent normal adult emergence from the pupal stage, and causes sterility in pupae and emerged adults.

Two commenters requested assurance that actionable pests will not be introduced into the United States in connection with the pallets used in the shipment of fresh pummelo fruit from Thailand or via transshipment through countries not included in the pest risk assessment and RMD.

Wood packaging material, including pallets, used for the importation of commodities is governed by the regulations in 7 CFR 319.40–3(b), which stipulates treatment and marking. For the reasons explained in the proposed rule, the RMD, and this document, we consider the required provisions adequate to mitigate the risk associated with the importation of fresh pummelo fruit from Thailand. The commenters did not provide any evidence suggesting that the mitigations are individually or collectively ineffective. Failure to adhere to program standards, including packaging transshipped fruits, may result in removal from the export program.

One commenter observed that fresh pummelo fruit imported into Canada is currently not allowed to enter the United States for phytosanitary reasons and questioned the wisdom of allowing the fruit to directly enter the United States.

Each country determines its own importation requirements based on a number of factors, including factors particular to that country. While there may be some similarities in each country's phytosanitary approach, the requirements are not always identical. The requirements established by this document are country- and commodity-specific for the importation of fresh pummelo fruit from Thailand into the continental United States.

Comments on Trade and Economic Factors

One commenter expressed concern that recent APHIS trade and policy efforts have tended to favor facilitating import access to the U.S. market.

APHIS' phytosanitary evaluation process only begins once a country's NPPO has submitted a formal request for market access for a particular commodity. APHIS does not solicit such requests, nor do we control which countries submit requests. APHIS' primary responsibility with regard to international import trade is to identify and manage the phytosanitary risks associated with importing commodities. When we determine that the risk associated with the importation of a commodity can be successfully mitigated, as is the case regarding the importation of fresh pummelo fruit from Thailand, it is our responsibility under the trade agreements to which we are a signatory, such as the World Trade Organization's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), to provide for the importation of that commodity.

Another commenter said that allowing for the importation of fresh pummelo fruit from Thailand may not produce a positive effect on the U.S. economy or domestic producers. Two commenters stated that there is a sufficient domestically produced supply of fresh pummelo fruit to meet current market demand and hypothesized that the lower cost of imported fresh pummelo fruit would serve to harm domestic producers.

APHIS' statutory authority allows us to prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. As a signatory to the SPS Agreement, the United States has agreed to base its decisionmaking process on evaluation and mitigation of phytosanitary risk and not on the economic and trade factors referenced by the commenter. As we discuss later in this document, however, available data does not suggest that fresh pummelo fruit from Thailand will be imported at a lower cost than domestic production.

Two commenters objected to our requirement that the fresh pummelo fruit originate from commercial farms and stated that such a requirement would effectively exclude the majority of farmers in Thailand while encouraging the development of large scale, monoculture farms. One of the commenters cited a USDA requirement of $350,000 net income as the minimum amount needed for classification as a commercial farm.

We proposed to allow only commercial consignments of fresh pummelo fruit from Thailand to be

accepted for importation into the continental United States. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packing, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. The size of the farm [2] of origin is not a factor in determining whether or not a given consignment is commercial.

One commenter stated that Federal and State resources intended to protect domestic agriculture production have not kept pace with the growing volume of fruit and vegetable imports, placing strain on the system.

APHIS has reviewed its resources and consulted with U.S. Customs and Border Protection and believes there is adequate coverage across the United States to ensure compliance with APHIS regulations, including the importation of pummelo from Thailand, as established by this action. The commenter did not provide any evidence of shortfalls in State resources that would prevent APHIS from carrying out the provisions of this action.

A commenter said that the economic analysis that accompanied the proposed rule did not reflect the potential financial impacts of pummelo producers in Florida. The commenter said that allowing for the importation of fresh pummelo fruit from Thailand at the same time of year that domestic fruit comes to market would result in negative economic impacts for Florida growers.

The commenter cited the importation of fresh pummelo fruit from Southeast Asia into Canada as an example of what may happen to the U.S. fresh pummelo market, stating that imported fruit in Canada has been marketed at a price far lower than U.S. domestic growers can achieve. The commenter predicted that the price of fresh pummelo fruit in the Canadian market is an indicator of future U.S. prices for imported pummelos and consequently greatly harm domestic growers.

While our trade decisions are made based on science rather than economic factors, we note that we stated in the economic analysis that accompanied the proposed rule that information on pummelo production in Arizona, Florida, and Texas was not available. In addition, U.S. import and export data specific to pummelo are also not available because pummelo is grouped with grapefruit in Department of Commerce trade statistics (Harmonized Tariff Schedule 080540). As always, APHIS welcomes informed comment on the size and scope of any industry for which we do not have data.

In response to the commenter's concerns, we examined the market for fresh pummelo fruit in Canada and determined that Canada imported an average of 36,379 metric tons per year during the period 2017 through 2020. Of this, 44 percent originated in the United States, and 0.003 percent (or 124 metric tons) originated from Thailand. During that period, the average price Canadian importers paid overall for fresh pummelo fruit was $990 per metric ton, the average price Canadian importers paid for fresh pummelo fruit from the United States was $989 per metric ton, and the average price Canadian importers paid for fresh pummelo fruit from Thailand was $2,030 per metric ton. Based on this data, we do not agree with the commenter's claim that U.S. pummelo fruit is at a competitive price disadvantage in the Canadian market in relation to imported fresh pummelo fruit from Thailand. Our available Canadian data suggests Thailand's share of the domestic pummelo market within the United States will be minimal, compared to domestic production, and Thailand will not be able to market the fruit at a price point below that of domestic producers.

Finally, we note that the proposed rule was issued prior to the October 15, 2018, effective date of a final rule [3] that revised the regulations in § 319.56–4 by broadening an existing performance standard to provide for approval of all new fruits and vegetables for importation into the United States using a notice-based process. That final rule also specified that region- or commodity-specific phytosanitary requirements for fruits and vegetables would no longer be found in the regulations, but instead in APHIS' Fruits and Vegetables Import Requirements (FAVIR) database. With those changes to the regulations, we cannot issue the final regulations as contemplated in our March 2018 proposed rule and are therefore discontinuing that rulemaking without a final rule. Instead, it is necessary for us to finalize this action through the issuance of a notification.

Therefore, in accordance with the regulations in § 319.56–4(c)(3)(iii), we are announcing our decision to authorize the importation into the continental United States of fresh pummelo fruit from Thailand subject to the following phytosanitary measures, which will be listed in FAVIR, available at *https://epermits.aphis.usda.gov/manual:*

- The fresh pummelo fruit must be shipped in commercial consignments only.
- The fresh pummelo fruit must be treated with irradiation in accordance with 7 CFR part 305.
- Prior to packing, the fresh pummelo fruit must be washed, brushed, disinfested, submerged in surfactant, treated for *Xanthomonas citri* Gabriel *et al.* with an APHIS-approved surface disinfectant, and treated for *Phyllosticta citriasiana* and *Phyllosticta citricarpa* with an APHIS-approved fungicide.
- Each shipment of fresh pummelo fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Thailand. If the fresh pummelo fruit was irradiated in Thailand, each consignment of fruit must be inspected jointly in Thailand by APHIS and the NPPO of Thailand, and the phytosanitary certificate must contain an additional declaration attesting to irradiation of the fresh pummelo fruit in accordance with 7 CFR part 305. If the fresh pummelo fruit will be irradiated upon arrival into the continental United States, joint inspection in Thailand and an additional declaration on the phytosanitary certificate are not required.
- Consignments of fresh pummelo fruit from Thailand are subject to inspection at ports of entry in the continental United States.

In addition to these specific measures, fresh pummelo fruit from Thailand will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the burden and recordkeeping requirements associated with this action are covered under the Office of Management and Budget control number 0579–0049, which is updated every 3 years during the required renewal period. We estimate the total annual burden to be 24 hours.

[2] The $350,000 figure is a standard used by USDA's Economic Research Service in the course of their own research as the dividing line between small and midsize domestic farms. APHIS does not use this measure; we instead rely on Small Business Association standards to identify small entities potentially affected by our rules.

[3] 83 FR 46627 (September 14, 2018). To view the final rule, go to *https://www.regulations.gov* and enter APHIS–2010–0082 in the Search field.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this action, please contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Specialist, at (301) 851–2483.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 4th day of November 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–24490 Filed 11–9–21; 8:45 am]

BILLING CODE 3410–34–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1022

Fair Credit Reporting; Name-Only Matching Procedures

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Advisory opinion.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing this advisory opinion to highlight that a consumer reporting agency that uses inadequate matching procedures to match information to consumers, including name-only matching (*i.e.,* matching information to the particular consumer who is the subject of a consumer report based solely on whether the consumer's first and last names are identical or similar to the names associated with the information), in preparing consumer reports is not using reasonable procedures to assure maximum possible accuracy under section 607(b) of the Fair Credit Reporting Act (FCRA).

DATES: This advisory opinion is effective on November 10, 2021.

FOR FURTHER INFORMATION CONTACT: Brandy Hood, Courtney Jean, Kristin McPartland, Amanda Quester, or Pavneet Singh, Senior Counsels, Office of Regulations, at (202) 435–7700 or *https://reginquiries.consumerfinance.gov/.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is issuing this advisory opinion through the procedures for its Advisory Opinions Policy.[1] Refer to those procedures for more information.

I. Advisory Opinion

A. Background

Accuracy in consumer reports is of vital importance to the consumer reporting system, particularly as consumer reports play an increasingly important role in the lives of American consumers. Consumer reporting agencies assemble and evaluate credit, public record, and other consumer information into consumer reports. The information in these reports is used by many different types of businesses, from creditors and insurers to landlords and employers, to make eligibility and other decisions about consumers. Creditors, for example, use information in consumer reports to determine whether, and on what terms, to extend credit to a particular consumer. The majority of landlords and employers use background screening reports to screen prospective tenants and employees.[2]

Inaccurate information in consumer reports can have significant adverse impacts on consumers. These impacts are particularly concerning for prospective renters and job seekers struggling to recover from the impacts of the COVID–19 pandemic. Consumers with inaccurate information in their consumer reports may, for example, be denied credit or housing they would have otherwise received, or may be offered less attractive terms than they would have been offered if their information had been accurate. For example, an applicant whose tenant screening report shows past litigation or a poor rental payment history may find it difficult or more expensive to rent property.[3] Job-seekers with inaccurate information in their consumer reports may also be denied employment opportunities.[4] Inaccurate information in consumer reports can also harm the businesses that use such reports by leading them to incorrect decisions. Consumer report accuracy relies on the various parties to the consumer reporting system: the three nationwide consumer reporting agencies—Equifax, Experian, and TransUnion; other consumer reporting agencies, such as background screening companies; entities such as creditors who furnish information to consumer reporting agencies (*i.e.,* furnishers); public record repositories; users of credit reports; and consumers.

The FCRA, enacted in 1970, regulates consumer reporting. The statute was designed to ensure that ''consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information.'' [5] The FCRA was enacted ''to protect consumers from the transmission of inaccurate information about them and to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner.'' [6] Because of the importance of consumer report accuracy to businesses and consumers, the structure of the FCRA creates interrelated legal standards and requirements to support the policy goal of accurate credit reporting. Among these is the requirement that, when preparing a consumer report, consumer

[1] 85 FR 77987 (Dec. 3, 2020).

[2] *See* Nat'l Consumer Law Ctr., *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing* 3 (Dec. 2019), *https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf;* Bureau of Consumer Fin. Prot., *Market Snapshot: Background Screening Reports: Criminal background checks in employment* 3–4 (Oct. 2019), *https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf* (CFPB Background Screening Report); Sharon Dietrich, *Preventing Background Screeners from Reporting Expunged Criminal Cases,* Sargent Shriver Nat'l Ctr. on Poverty L. (Apr. 2015).

[3] *See, e.g.,* Bureau of Consumer Fin. Prot., *Complaint Bulletin: COVID–19 issues described in consumer complaints* 15 (July 2021), *https://files.consumerfinance.gov/f/documents/cfpb_covid-19-issues-described-consumer-complaints_complaint-bulletin_2021-07.pdf* (CFPB Complaint Bulletin) (noting that, in their complaints to the Bureau, some consumers have reported being denied applications for housing because information in their tenant screening reports was inaccurate, and other consumers reported facing homelessness because an eviction had negatively affected their credit, making it more difficult to secure housing); Kaveh Waddell, *How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times,* Consumer Reports (Mar. 11, 2021), *https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times/;* Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters,* N.Y. Times (May 28, 2020), *https://www.nytimes.com/2020/05/28/business/renters-background-checks.html.*

[4] CFPB Background Screening Report, *supra* note 2, at 13–14.

[5] 15 U.S.C. 1681(b).

[6] *Guimond* v. *Trans Union Credit Info.,* 45 F.3d 1329, 1333 (9th Cir.1995) (citations omitted).

reporting agencies ''shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.'' [7] This requirement remains as important today as it was when the statute was enacted in 1970.

Concerns about the accuracy of information included in consumer reports are long-standing. In 2003, Congress passed the Fair and Accurate Credit Transactions (FACT) Act, which, in addition to expanding the FCRA's substantive consumer protections, required the Federal Trade Commission (FTC) to conduct an ongoing study of consumer report accuracy and completeness.[8] In 2012, the FTC published a report summarizing results of that study, finding, among other things, that one in five consumers who participated in the study had an error on at least one of their three nationwide credit reports.[9] More recently, the Bureau and the FTC hosted a full-day public workshop to discuss issues affecting the accuracy of both traditional credit reports and employment and tenant background screening reports.[10]

The Bureau is especially concerned about the effects of these accuracy problems in light of the economic and public health impacts of COVID–19. Income shocks resulting from the pandemic, such as a job loss, reduced work hours, or the death or illness of a family member, have contributed to an increase in housing and financial insecurity for many households.[11] Low-income and minority renters have been disproportionately affected by the economic effects of the COVID–19 pandemic, including job losses.[12] The Bureau is concerned that the risk that inaccurate data will be included in consumer reports may be further heightened by increased volumes of negative information in the consumer reporting system resulting from the pandemic. Inaccurate information in consumer reports can have devastating impacts on consumers, including impairing the ability of renters and job-seekers negatively impacted by the pandemic to secure new rental housing, find employment, and otherwise recover from the pandemic's economic effects. An increase in housing instability and financial distress caused by inaccurate consumer reporting information could undermine the nation's efforts to recover from the pandemic.

Consumer complaints received by the Bureau reflect significant consumer concern about inaccuracies in consumer reports. Complaints about ''incorrect information on your report'' have represented the largest percentage of consumer complaints received by the Bureau regarding credit or consumer reporting each year for at least the last five years.[13] In 2020 alone, companies provided responses to more than 191,000 such complaints, which represents approximately 68 percent of credit or consumer reporting complaints responded to by companies that year.[14]

Inaccuracies in consumer reports can in part be attributed to errors introduced by consumer reporting agencies during the ''matching'' process. When preparing a consumer report, a consumer reporting agency must assign or ''match'' information it obtains from a public data source or receives from a furnisher to the specific consumer who is the subject of the report. Each year, the Bureau receives many complaints from consumers arising from errors that likely occurred during the matching process. Some consumers who submit such complaints include narrative descriptions noting, among other things, their frustration at trying to get such errors corrected, as well as the negative consequences of such errors, such as not being able to complete planned purchases of homes or cars.[15]

One method of matching, ''name-only matching,'' is particularly likely to lead to inaccuracies in consumer reports. Name-only matching occurs when a consumer reporting agency uses only first and last name to determine whether a particular item of information relates to a particular consumer, without using other personally identifying information such as address, date of birth, or Social Security number. Matching errors are particularly common when using name-only matching because many consumers have the same or similar names. For example, in the United States, the 2010 census (the most recent to have last name statistics available) found more than 2.4 million respondents with the last name of Smith, 1.9 million respondents with the last name of Johnson, 1.6 million respondents with the last name of Williams, and more than 1 million respondents each with the last name of Brown, Jones, Garcia, Miller, Davis, Rodriguez, Martinez, or Hernandez.[16] Given the commonality of many first and last names, it is not unlikely that thousands, or even tens of thousands, of consumers, might share a particular first and last name combination.[17]

[7] 15 U.S.C. 1681e(b).

[8] Fair and Accurate Credit Transactions Act of 2003, Public Law 108–159, sec. 319, 117 Stat. 1952 (2003).

[9] *See* Fed. Trade Comm'n, *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003,* at 64 (Dec. 2012), *https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf.*

[10] Fed. Trade Comm'n, *Accuracy in Consumer Reporting Workshop* (Dec. 10, 2019), *https://www.ftc.gov/news-events/events-calendar/accuracy-consumer-reporting-workshop.*

[11] *See* Bureau of Consumer Fin. Prot., *Housing Insecurity and the COVID–19 Pandemic,* at 5 (Mar. 1, 2021), *https://files.consumerfinance.gov/f/documents/cfpb_Housing_insecurity_and_the_COVID-19_pandemic.pdf.*

[12] *See id.* at 8, 18; *see also* Pew Research Ctr., *Economic Fallout From COVID–19 Continues To Hit Lower-Income Americans the Hardest* (Sept. 24, 2020), *https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/.*

[13] *See* Bureau of Consumer Fin. Prot., *Consumer Response Annual Report,* at 22 (Mar. 2021), *https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf;* Bureau of Consumer Fin. Prot., *Consumer Response Annual Report,* at 19 (Mar. 2020), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf;* Bureau of Consumer Fin. Prot., *Consumer Response Annual Report,* at 19 (Mar. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2018.pdf;* Bureau of Consumer Fin. Prot., *Consumer Response Annual Report,* at 13 (Mar. 2018), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2017.pdf;* Bureau of Consumer Fin. Prot., *Consumer Response Annual Report,* at 18 (Mar. 2017), *https://files.consumerfinance.gov/f/documents/201703_cfpb_Consumer-Response-Annual-Report-2016.PDF.*

[14] *See* Bureau of Consumer Fin. Prot., *Consumer Response Annual Report,* at 22 (Mar. 2021), *https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf* for more in-depth analyses. Additionally, consumers with a problem with a credit or consumer report may submit multiple complaints, for example, complaints about data furnishers and complaints about consumer reporting agencies. *Id.* at 21.

[15] *See generally* Bureau of Consumer Fin. Prot., Consumer Complaint Database, *https://www.consumerfinance.gov/data-research/consumer-complaints/* (last visited Oct. 21, 2021).

[16] U.S. Census Bureau, *Frequently Occurring Surnames from the 2010 Census, https://www.census.gov/topics/population/genealogy/data/2010_surnames.html* (last revised Dec. 27, 2016).

[17] For example, one study catalogued a number of first-and-last name combinations such as James Smith that each corresponded to over 30,000 individuals in the United States. *See* Lee Hartman, Southern Illinois University, *John Smith et al.: Some observations on how the 20 most popular first names combine with the 20 most popular surnames in the United States* (n.d.), *https://web.archive.org/web/20190225042148/http:/mypage.siu.edu/lhartman/johnsmith.html; see also* Mona Chalabi & Andrew Flowers, *Dear Mona, What's The Most Common Name In America?* (Nov. 20, 2014), *https://fivethirtyeight.com/features/whats-the-most-common-name-in-america/* (cataloguing common first-and-last name combinations). Indeed, one court, in evaluating an FCRA section 607(b) claim, noted that there could be as many as 125,000 individuals named ''David Smith'' living in the United States. *Smith* v. *LexisNexis Screening Solutions, Inc.,* 837 F.3d 604, 610 (6th Cir. 2016) (noting that '''David Smith' is an exceedingly common first-and-last-name combination—to the tune of over 125,000 individuals living in the United States'').

The risk of mismatching from name-only matching is likely to be greater for Hispanic, Asian, and Black individuals because there is less last-name diversity in those populations than among the non-Hispanic white population.[18] For example, a study of 2010 census data indicated that the percentage of non-Hispanic white respondents covered by the top 10 most common last names is lower than the corresponding percentages for Hispanic, Asian, and Black respondents.[19] The study found the highest level of last-name clustering among Hispanic respondents, noting that just 26 last names cover a quarter of the Hispanic population (as compared to 319 last names required to cover a quarter of the population identified as non-Hispanic white alone) and that 16.3 percent of Hispanic respondents reported one of the top 10 most common last names (as compared to 4.5 percent for non-Hispanic white alone respondents).[20] The study further noted that these clustering patterns were similar for Asian and Black respondents.[21]

The Bureau, the FTC, and State attorneys general have brought enforcement actions in this area. In 2014, a background screening company settled FTC allegations that it violated FCRA section 607(b) by failing to use reasonable procedures to assure maximum possible accuracy of consumer report information when it provided employers background screening reports about job applicants that included, based on name-only matching, information about whether the applicants were registered in a National Sex Offender Registry.[22] In 2019, the Bureau settled allegations that a background screening company violated FCRA section 607(b) by matching publicly sourced criminal records to job applicants based only on limited personal identifiers, which could include first and last name and either date of birth or address, a practice that resulted in ''a heightened risk of false positives'' because commonly named individuals (*e.g.,* John Smith) might share the same first and last name and date of birth or address.[23] Similarly, in 2015, the Bureau took action against a background screening company for violating FCRA section 607(b) by permitting, but not requiring, employers to provide middle names for job applicants for purposes of matching criminal record information to particular consumers. According to the Bureau's complaint, the company's procedures resulted in the reporting of mismatched criminal record information about consumers.[24]

In March 2015, the three nationwide consumer reporting agencies—Equifax, Experian, and TransUnion—launched the National Consumer Assistance Plan (NCAP), an initiative aimed at enhancing the accuracy of credit reports and making it easier for consumers to correct errors on their credit reports. The NCAP was the result of a settlement between the nationwide consumer reporting agencies and over thirty State Attorneys General that required the nationwide consumer reporting agencies to, among other things, form a working group to establish standards regarding the collection of public record data for consumer credit reports.[25] Pursuant to the NCAP, starting July 1, 2017, public record data obtained by the nationwide consumer reporting agencies for inclusion on credit reports must contain name, address, and Social Security Number and/or date of birth and must be refreshed at least every 90 days.[26]

Courts have also spoken on this topic. For example, a decade ago, the Third Circuit in *Cortez* v. *Trans Union, LLC* considered a case in which the nationwide consumer reporting agency TransUnion had indicated in a consumer report that the consumer's name matched a name on a list maintained by the Office of Foreign Assets Control (OFAC), despite the fact that TransUnion had information within its own files showing that the OFAC alert was not about the correct consumer.[27] The Third Circuit upheld the district court's ruling that TransUnion's matching protocols that compared only the consumer's name to the names on the OFAC list did not satisfy the requirement of FCRA section 607(b).[28] Nonetheless, TransUnion did not adequately update its matching practices, and it was sued a second time for similar practices in *Ramirez* v. *TransUnion LLC.* In a 2020 decision that was later overturned on other grounds, the Ninth Circuit ruled that ''despite [*Cortez*], TransUnion continued to use problematic matching technology. . . . In doing so, it ran an unjustifiably high risk of error.'' [29] The court upheld a jury verdict deeming TransUnion liable for violating section 607(b) because it used ''rudimentary name-only matching software without any additional checks to avoid false positives.'' [30] The Ninth Circuit held that the violation was willful because the correct reading of the FCRA should have been clear to TransUnion after *Cortez.*[31]

[18] Joshua Comenetz, *Frequently Occurring Surnames in the 2010 Census* 3–7 (Oct. 2016), *https://www2.census.gov/topics/genealogy/2010surnames/surnames.pdf;* U.S. Census Bureau, *Hispanic Surnames Rise in Popularity* (Aug. 9, 2017), *https://www.census.gov/library/stories/2017/08/what-is-in-a-name.html;* U.S. Census, *What's in a Name* (Dec. 15, 2016), *https://www.census.gov/newsroom/blogs/random-samplings/2016/12/what_s_in_a_name.html.*

[19] *Frequently Occurring Surnames in the 2010 Census, supra* note 18, at 4, 6, 7 & table 4 (noting that 14 of the 15 most rapidly increasing last names that were among the top 1,000 most common last names in both 2000 and 2010 were predominantly Asian or Hispanic).

[20] *Id.* at 7. Relatedly, one study estimated that four of the top 13 most common first-and-last-name combinations in the United States are names of Spanish origin. Specifically, the study estimated that there are more than 25,000 individuals in the United States each named Maria Garcia, Maria Rodriguez, Maria Hernandez, or Maria Martinez. *See John Smith et al., supra* note 17.

[21] *Frequently Occurring Surnames in the 2010 Census, supra* note 18, at 7.

[22] Complaint at ¶¶ 9–17, *U.S.* v. *InfoTrack Info. Servs, Inc.,* No. 1:14–cv–02054 (N.D. Ill. Mar. 24, 2014), *https://www.ftc.gov/enforcement/cases-proceedings/122-3092/infotrack-information-services-inc-et-al.*

[23] Complaint at ¶¶ 5–11, *Bureau of Consumer Fin. Prot.* v. *Sterling Infosys., Inc.,* No. 1:19–cv–10824 (S.D.N.Y. Nov. 22, 2019), *https://www.consumerfinance.gov/enforcement/actions/sterling-infosystems-inc/.*

[24] Consent Order at ¶¶ 4–13, *In re Gen. Info. Servs., Inc.,* 2015–CFPB–0028 (Oct. 29, 2015), *https://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf; see also, e.g.,* Complaint at ¶¶ 8–21, *Fed. Trade Comm'n* v. *RealPage, Inc.,* No. 3:18–cv–02737–N (N.D. Tex. Oct. 16, 2018), *https://www.ftc.gov/enforcement/cases-proceedings/152-3059/realpage-inc* (alleging defendant violated FCRA section 607(b) by using matching criteria that required ''an exact match on the applicant's last name only,'' and ''a 'soft', or non-exact, match for first name, middle name, and date of birth,'' resulting in defendant providing tenant screening reports with criminal record information for individuals other than the applicant).

[25] Assurance of Voluntary Compliance/Assurance of Voluntary Discontinuance at ¶ IV.E.6, *In re Equifax Info. Servs. LLC, Experian Info. Solutions, Inc., and TransUnion LLC* (May 20, 2015), *https://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Consumer-Protection/2015-05-20-CRAs-AVC.aspx.*

[26] Following the launch of the NCAP, the nationwide consumer reporting agencies took steps to remove public records not meeting the specified criteria and, beginning in April 2018, ceased including civil judgments and tax liens in the consumer reports they issued. Bankruptcies are the only type of public record that continue to be reported by the nationwide consumer reporting agencies. Other consumer reporting agencies, however, continue to include civil judgments and tax liens on the consumer reports they prepare. *See* Bureau of Consumer Fin. Prot., *Quarterly Consumer Credit Trends: Public records, credit scores, and credit performance* (Dec. 2019), *https://files.consumerfinance.gov/f/documents/cfpb_quarterly-consumer-credit-trends_public-records-credit-scores-performance_2019-12.pdf;* Bureau of Consumer Fin. Prot., *Quarterly Consumer Credit Trends: Public Records* (Feb. 2018), *https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-trends_public-records_022018.pdf.*

[27] 617 F.3d 688 (3d Cir. 2010).

[28] *Id.*

[29] *Ramirez* v. *TransUnion, LLC,* 951 F.3d 1008, 1032 (9th Cir. 2020), *rev'd on standing grounds,* 141 S. Ct. 2190 (June 25, 2021).

[30] *Id.* at 1022.

[31] *Id.* at 1031–33. Consumers have also brought other private party claims under the FCRA relating to matching using limited personal identifiers. *See,*

Despite these enforcement actions, the steps taken by the nationwide consumer reporting agencies pursuant to the NCAP, and these court decisions, it appears that some consumer reporting agencies continue to use matching practices that do not satisfy the standard of ''reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates,'' as required by FCRA section 607(b). The NCLC stated in a 2019 report that some background screening companies are still relying on name-only matches.[32] NCLC and other consumer and civil rights groups recently requested that the Bureau provide guidance that name-only matching is a practice that fails to comply with the FCRA.[33]

The Bureau is issuing this advisory opinion to remind consumer reporting agencies that their matching practices must comply with their FCRA obligation to ''follow reasonable procedures to assure maximum possible accuracy'' under section 607(b), and that the practice of name-only matching in particular is far from sufficient to meet that standard. Indeed, as illustrated by the foregoing discussion, multiple additional elements beyond names may often be required to meet the FCRA standard of ''reasonable procedures to assure maximum possible accuracy.''

B. Coverage

This advisory opinion applies to all consumer reporting agencies as defined in FCRA section 603(f).[34] As used in this advisory opinion, ''name-only matching'' refers to matching information to the particular consumer who is the subject of a consumer report based solely on whether the consumer's first and last names are identical or similar to the first and last names associated with the information, without verifying the match using additional identifying information for the consumer. ''Matching procedures'' refers to the broader set of practices and procedures consumer reporting agencies use to link information to a consumer's consumer report.

C. Legal Analysis

FCRA section 607(b) provides that ''[w]henever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.'' [35] The Bureau interprets the requirement in section 607(b) to include as an integral component that the information in fact pertains to the consumer who is the subject of the report. Indeed, the text of section 607(b) refers explicitly to ''the individual about whom the report relates.'' This interpretation is consistent with the core purpose of the FCRA as described in FCRA section 602—*i.e.,* to require consumer reporting agencies to adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner that is fair and equitable to the consumer with regard to confidentiality, accuracy, and the proper use of such information.[36]

Other provisions of the FCRA that directly relate to section 607(b) also support this interpretation. For example, section 603(d) of the FCRA defines ''consumer report'' to include certain communications ''bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living'' that are ''used or expected to be used . . . for the purpose of . . . establishing the consumer's eligibility'' for credit, employment, insurance, and other purposes.[37] Information in a consumer report on a different consumer than the consumer report purports to relate to would not have any utility in serving as a factor in establishing the eligibility of the person the consumer report purports to relate to. Additionally, section 604 of the FCRA generally provides that a consumer reporting agency may not provide a consumer report about a particular consumer unless there is a permissible purpose, such as a legitimate business need related to a transaction initiated by the consumer.[38] The FCRA expressly ties many of these permissible purposes to the specific consumer who is the subject of the report, making it clear that Congress intended that information in the consumer report would relate to that specific consumer. For instance, in FCRA section 604(a)(3)(A), Congress allowed consumer reporting agencies to release a consumer report to a person if they have reason to believe the person ''intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished.'' [39]

The steps that a consumer reporting agency takes in matching information it obtains or receives to the correct consumer in preparing consumer reports are critical in assessing whether a consumer reporting agency is following ''reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates'' under FCRA section 607(b). As detailed in part I.A. above, matching information to the consumer who is the subject of a consumer report by name alone creates significant accuracy concerns because most names are shared with other consumers and, in some cases, with thousands of other consumers. In preparing consumer reports, it is not a reasonable procedure to assure maximum possible accuracy to use insufficient identifiers to match information to the consumer who is the subject of the report. In particular, it has been the consistent view of the Bureau that name-only matching is not a procedure that assures maximum possible accuracy, and thus, consumer reporting agencies that use name-only matching violate FCRA section 607(b).[40] That continues to be the Bureau's position as outlined in this advisory opinion. Moreover, nothing in this analysis creates a safe harbor for the FCRA requirement of ''reasonable procedures to assure maximum possible accuracy'' with respect to matching.

Based on the high risk that name-only matching will result in the inclusion of information that does not pertain to the consumer who is the subject of the report and the relative lack of burden on a consumer reporting agency associated

e.g., Lopez v. *Nat'l Credit Reporting, Inc.,* 2013 WL 1999624 (N.D. Cal. May 13, 2013) (denying motion to dismiss in case alleging violation of FCRA section 607(b) related to mixed file due to match based only on name and similar area of residence).

[32] Nat'l Consumer Law Ctr., *Broken Records Redux, supra* note 2, at 18, 38.

[33] Letter from American Civil Liberties Union *et al.* to Secretary Marcia L. Fudge, U.S. Dep't of Hous. & Urban Dev. *et al.* (July 13, 2021), at 7–8 (addressing technology's role in housing discrimination), *https://www.aclu.org/letter/coalition-memo-re-addressing-technologys-role-housing-discrimination.*

[34] 15 U.S.C. 1681a(f).

[35] 15 U.S.C. 1681e(b).

[36] 15 U.S.C. 1681(a); *see also Guimond,* 45 F.3d at 1333. Inaccuracy based on mistaken identity was one of the reasons a first version of the FCRA was introduced. As Senator William Proxmire stated when introducing the legislation, ''There are many varieties of inaccurate information . . . . One is the case of mistaken identity, where two individuals with the same names are confused, and the deserving individual is denied credit because of something done by the other person.'' 114 Cong. Rec. 24,902, 24,903 (1968).

[37] 15 U.S.C. 1681a(d).

[38] 15 U.S.C. 1681b.

[39] 15 U.S.C. 1681b(a)(3)(A).

[40] *See* Consent Order at ¶¶ 4–13, *In re Gen. Info. Servs., Inc.,* 2015–CFPB–0028 (Oct. 29, 2015), *https://files.consumerfinance.gov/f/201510_cfpb_consent-order_general-information-service-inc.pdf;* Complaint at ¶¶ 5–11, *Bureau of Consumer Fin. Prot.* v. *Sterling Infosys., Inc.,* No. 1:19–cv–10824 (S.D.N.Y. Nov. 22, 2019), *https://www.consumerfinance.gov/enforcement/actions/sterling-infosystems-inc/.*

with utilizing additional identifiers or not including name-only matched information in a consumer report, the Bureau continues to conclude that it is not a reasonable procedure to use name-only matching to match information to the consumer who is the subject of the report in preparing a consumer report.

In some cases, in preparing consumer reports, consumer reporting agencies may obtain information from a data broker, database, or other source that does not have or use identifying information other than consumers' names. It is not a reasonable procedure for the consumer reporting agency to simply include information from such sources in a consumer's report without taking additional steps to match the information to the consumer who is the subject of the report, such as consulting other databases or sources of information that contain additional identifying information.

II. Regulatory Matters

This advisory opinion is an interpretive rule issued under the Bureau's authority to interpret the FCRA, including under section 1022(b)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[41] which authorizes guidance as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial laws.[42]

As an interpretive rule, this advisory opinion is exempt from the notice-and-comment rulemaking requirements of the Administrative Procedure Act.[43] Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[44] The Bureau has also determined that this advisory opinion does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[45]

Pursuant to the Congressional Review Act,[46] the Bureau will submit a report containing this interpretive rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: November 3, 2021.

Rohit Chopra,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2021–24471 Filed 11–9–21; 8:45 am]

BILLING CODE 4810–AM–P

[41] Public Law 111–203, 124 Stat. 1376 (2010).

[42] 12 U.S.C. 5512(b)(1).

[43] 5 U.S.C. 553(b).

[44] 5 U.S.C. 603(a), 604(a).

[45] 44 U.S.C. 3501–3521.

[46] 5 U.S.C. 801 *et seq.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 107

[Docket No. FAA–2018–1087; Amdt. No. 107–9]

RIN 2120–AK85

Operation of Small Unmanned Aircraft Systems Over People; Technical Amendments

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

ACTION: Technical amendments.

SUMMARY: The Federal Aviation Administration is making technical amendments to the ''Operation of Small Unmanned Aircraft Systems over People'' final rule, which was published on January 15, 2021. The final rule document inadvertently misnumbered regulatory text and used inconsistent language to refer to a process.

DATES: Effective November 10, 2021.

FOR FURTHER INFORMATION CONTACT: Michael Machnik, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, 8th Floor, Washington, DC 20591; telephone 1–844–FLY–MYUA; email: *UASHelp@faa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of the notice of proposed rulemaking (NPRM) (84 FR 3856, February 13, 2019), all comments received, the final rule, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of these technical amendments will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found at the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing these technical amendments, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

Good Cause for Adoption Without Prior Notice

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d)(3) of the APA requires that agencies publish a rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

Because this action merely makes technical amendments to a published final rule, the FAA finds that notice and public comment under 5 U.S.C. 553(b) is unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days.

Background

On January 15, 2021, the ''Operation of Small Unmanned Aircraft Systems Over People'' final rule (RIN 2120–AK85) published in the **Federal Register** at 86 FR 4314. After the rule was published, the FAA discovered three minor drafting errors that require correction. This document corrects drafting errors in § 107.110(b) and (c) and in § 107.125(a)(2). In § 107.110, two paragraphs were designated improper paragraph levels. Section 107.110(b) should change to § 107.110 (a)(2) and § 107.110(c) should change to § 107.110(b). The final drafting errors that occur in § 107.125(a)(2) should read as ''FAA-accepted declaration of compliance,'' instead of ''current'' declaration of compliance, to match the language in § 107.115(a)(2).

List of Subjects in 14 CFR Part 107

Aircraft, airmen, Aviation safety, Reporting and recordkeeping requirements.

Accordingly, the FAA corrects 14 CFR part 107 by making the following technical amendments:

PART 107—SMALL UNMANNED AIRCRAFT SYSTEMS

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40101 note, 40103(b), 44701(a)(5), 46105(c), 46110, 44807.

§ 107.110 [Amended]

■ 2. Amend § 107.110 by redesignating paragraphs (b) and (c) and paragraphs (a)(2) and (b), respectively.

■ 3. Amend § 107.125 by revising paragraph (a)(2) to read as follows:

§ 107.125 Category 3 operations: Operating requirements.

* * * * *

(a) * * *

(2) Is listed on an FAA-accepted declaration of compliance as eligible for Category 3 operations in accordance with § 107.160; and

* * * * *

Issued in Washington, DC, under the authority provided by 49 U.S.C. 106(f), 40101 note and 44807.

Caitlin Locke,

Acting Deputy Executive Director, Office of Rulemaking, Federal Aviation Administration.

[FR Doc. 2021–24550 Filed 11–9–21; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–5904]

Performance-Based Investment Advisory Fees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is adopting amendments to the rule under the Investment Advisers Act of 1940 (''Advisers Act'') that permits investment advisers to charge performance-based compensation to ''qualified clients.'' The rule defines ''qualified client'' with reference to specific dollar amount thresholds, which are required to be adjusted every five years to account for the effects of inflation. These amendments replace specific dollar amount thresholds in the rule's ''qualified client'' definition with references to the Commission's ''most recent order,'' as defined by the amended rule, containing the specific dollar amount thresholds adjusted for inflation.

DATES: The amendments are effective on November 10, 2021.

FOR FURTHER INFORMATION CONTACT: Matthew Cook, Senior Counsel, at (202) 551–6787 or *IArules@sec.gov,* Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to 17 CFR 275.205–3 (rule 205–3) under the Advisers Act.[1]

I. Background

Section 205(a)(1) of the Advisers Act generally prohibits an investment adviser registered or required to be registered with the Commission from entering into, extending, renewing, or performing any investment advisory contract that provides for compensation to the adviser based on a share of capital gains on, or capital appreciation of, the funds of a client.[2] Congress restricted these compensation arrangements (also known as performance compensation or performance fees) in 1940 to protect advisory clients from fee arrangements it believed could encourage advisers to engage in speculative trading practices while managing client funds in order to realize or increase advisory fees.[3] Congress subsequently authorized the Commission to exempt any advisory contract from the performance fee prohibition if the contract is with any person that the Commission determines does not need the protections of this restriction.[4] Rule 205–3 under the Advisers Act exempts an investment adviser from the prohibition against charging a client performance fees when the client is a ''qualified client.'' [5] A qualified client includes a client that has at least a certain dollar amount in assets under management with the adviser immediately after entering into the advisory contract (''assets-under-management test''), and a client that the adviser reasonably believes, immediately prior to entering into the contract, had a net worth of more than a certain dollar amount (''net worth test'').[6]

The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [7] amended section 205(e) of the Advisers Act to provide that, by July 21, 2011, and every five years thereafter, the Commission shall, by order, adjust for the effects of inflation the dollar amount thresholds included in rules issued under section 205(e), rounded to the nearest multiple of $100,000.[8] In 2011, the Commission issued an order to revise the dollar amount thresholds of the assets-under-management and net worth tests to $1,000,000 and $2,000,000, respectively.[9] In 2012, the Commission amended rule 205–3 to codify the dollar amount thresholds in the 2011 Order and, among other

[1] 15 U.S.C. 80b. Unless otherwise noted, all references to statutory sections are to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified, and all references to rules under the Advisers Act, including rule 205–3, are to title 17, part 275 of the Code of Federal Regulations [17 CFR part 275].

[2] 15 U.S.C. 80b–5(a)(1).

[3] *See* Exemption to Allow Registered Investment Advisers to Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 996 (Nov. 14, 1985) [50 FR 48556 (Nov. 26, 1985)] (''1985 Adopting Release''), at Section I.A and footnote 3.

[4] Section 205(e) of the Advisers Act. Section 205(e) provides that the Commission may determine that persons do not need the protections of section 205(a)(1) on the basis of such factors as ''financial sophistication, net worth, knowledge of and experience in financial matters, amount of assets under management, relationship with a registered investment adviser, and such other factors as the Commission determines are consistent with [section 205].''

[5] 1985 Adopting Release, *supra* footnote 3. The exemption applies to the entrance into, performance, renewal, and extension of advisory contracts. *See* rule 205–3(a).

[6] Rule 205–3(d)(1)(i) through (ii). The dollar amount thresholds of the assets-under-management and net worth tests were $500,000 and $1 million, respectively, when the Commission adopted rule 205–3 in 1985. *See* 1985 Adopting Release, *supra* footnote 3. In 1998, the Commission amended rule 205–3 to, among other things, revise the dollar amounts of the assets-under-management test and net worth test to adjust for the effects of inflation since 1985 (the amounts were adjusted to $750,000 and $1.5 million, respectively). *See* Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) [63 FR 39022 (July 21, 1998)]. These dollar amount thresholds were subsequently adjusted to account for the effects of inflation by Commission orders in 2011, 2016 and 2021, as discussed *infra* footnotes 9, 11, and 12 and accompanying text.

[7] Public Law 111–203, 124 Stat. 1376 (2010).

[8] *See* section 418 of the Dodd-Frank Act (requiring the Commission to issue an order every five years revising dollar amount thresholds in a rule that exempts a person or transaction from section 205(a)(1) of the Advisers Act if the dollar amount threshold was a factor in the Commission's determination that the person does not need the protections of that section).

[9] Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3236 (July 12, 2011) [76 FR 41838 (July 15, 2011)] (''2011 Order'').

amendments, to add a new paragraph (e) that states that the Commission will issue an order on or about May 1, 2016, and approximately every five years thereafter, adjusting for inflation the dollar amount thresholds of the assets-under-management and net worth tests of the rule.[10]

Since then, the Commission has twice issued orders adjusting for the effects of inflation the dollar amount thresholds in accordance with rule 205–3(e). In 2016, the Commission issued an order increasing the dollar amount threshold of the net worth test (to $2,100,000) and maintaining the dollar amount threshold of the assets-under management test (at $1,000,000).[11] On June 17, 2021, the Commission issued an order, effective as of August 16, 2021, increasing the dollar amount threshold of the assets-under-management test from $1,000,000 to $1,100,000 and the dollar amount threshold of the net worth test from $2,100,000 to $2,200,000.[12]

II. Discussion

A. Amendments to Rule 205–3

We are adopting amendments to rule 205–3 to replace the specific dollar amount thresholds in the rule's net worth and assets-under-management tests with references to the ''most recent order'' issued by the Commission containing the specific dollar amount thresholds adjusted for inflation. We define ''most recent order'' in the rule to mean ''the most recently issued Commission order in accordance with paragraph (e) of this section and as published in the **Federal Register**.'' [13]

As discussed above, the Commission is required to issue an order every five years adjusting for inflation the dollar amount thresholds of the assets-under-management and net worth tests of the rule. By amending the rule to refer to the ''most recent order'' for the dollar amount thresholds in the rule's ''qualified client'' tests, the rule will reference the most recently issued and published adjusted dollar amounts,[14] and more directly tie the relevant amount to the mechanism by which it is established (*i.e.,* the order).

We are also adopting an amendment to rule 205–3 to update from ''May 1, 2016'' to ''May 1, 2026'' the reference point of a specific date in paragraph (e). Paragraph (e) currently provides that the dollar amount thresholds of the assets-under-management and net worth tests will be adjusted for inflation by Commission order ''issued on or about May 1, 2016 and approximately every five years thereafter.'' [15] By amending the rule to refer to a date in the future, the rule will establish clearly the next expected date for issuance of a Commission order, while retaining the five-year period between such orders that was established by the Commission in 2012. We believe that referring in the rule text to a specific date will be useful to market participants in determining approximately when the Commission will issue and the **Federal Register** will publish an order for purposes of the amended rule's definition of ''most recent order.''

B. Procedural and Other Matters

Under the Administrative Procedure Act (''APA''), notice of proposed rulemaking is not required: (1) For interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (2) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[16] Given that the amendments to rule 205–3 do not substantively change the methodology for calculating the dollar amount thresholds or the amount of those thresholds, and instead merely add a reference in the rule to the Commission's ''most recent order'' adjusting the dollar amount thresholds and update the reference point of a specific date in paragraph (e), the Commission finds that good cause exists to dispense with public notice and comment pursuant to the notice and comment provisions of the APA. In accordance with the APA, the Commission also finds that there is good cause to establish an effective date less than 30 days after publication of rule 205–3.[17] The Commission finds there is good cause for the amendments to rule 205–3 to take effect upon publication in the **Federal Register** because the current rule's dollar thresholds do not conform to the dollar thresholds adopted pursuant to the most recent order. The Commission believes that establishing an effective date less than 30 days after publication of rule 205–3 is necessary to remove the outdated dollar thresholds in the rule by making the text consistent with the thresholds adopted pursuant to the most recent order. Furthermore, the amendments to rule 205–3 under the Advisers Act do not contain any ''collection of information'' requirements as defined by the Paperwork Reduction Act of 1995, as amended (''PRA'').[18] Accordingly, the PRA is not applicable.

III. Economic Analysis

The Commission is sensitive to the economic effects that could result from the amendments to rule 205–3. Investment advisers who charge, or may charge, performance fees and clients who meet, or may meet, the definition of ''qualified client'' in the rule could be affected by the amendments. As of August 2021, of the approximately 14,543 investment advisers registered with the Commission, 5,251 (36%)

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[10] Rule 205–3(d) and (e). *See* Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3372 (Feb. 15, 2012) [77 FR 10358 (Feb. 22, 2012)]. Rule 205–3(e) also specifies the methodology and price index on which inflation adjustments must be based.

[11] Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 4421 (June 14, 2016) [81 FR 39985 (June 20, 2016)] (''2016 Order'').

[12] Order Approving Adjustment for Inflation of the Dollar Amount Tests in Rule 205–3 under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 5756 (June 17, 2021) [86 FR 32993 (June 23, 2021)] (''2021 Order''). Both the 2016 Order and the 2021 Order stated that to the extent that contractual relationships were entered into prior to the order's effective date, the adjustments to the dollar amount thresholds would not generally apply retroactively to such contractual relationships, subject to the transition rules of rule 205–3, which are described *infra* footnote 14.

[13] Such orders are published in the **Federal Register**, but are also available on the SEC's website at *www.sec.gov/rules/other.shtml. See, e.g.,* 2021 Order, *supra* footnote 12. Publication of the orders on the website may precede publication in the **Federal Register**.

[14] The effective dates of the adjustments are specified in the ''most recent order'' and are subject to the transition provisions of the rule. *See, e.g.,* 2021 Order, *supra* footnote 12. The transition provisions state, for example, that if a registered investment adviser entered into a contract and satisfied the conditions of rule 205–3 that were in effect when the contract was entered into, the adviser will be considered to satisfy the conditions of the rule; if, however, a natural person or company that was not a party to the contract becomes a party, the conditions of the rule in effect at the time such natural person or company becomes a party will apply to that person or company. *See* rule 205–3(c)(1) through (3).

[15] Rule 205–3(e).

[16] 5 U.S.C. 553(b). The amendments to rule 205–3 do not require analysis under the Regulatory Flexibility Act (''RFA'') 5 U.S.C. 601(2) (for purposes of RFA analysis, the term ''rule'' generally means any rule for which the agency publishes a general notice of proposed rulemaking). In addition, pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated the amendments to rule 205–3 as not a ''major rule'' as defined by 5 U.S.C. 804(2). *See* 5 U.S.C. 801 *et seq.*

[17] 5 U.S.C. 553(d)). This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendment to rule 205–3 to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are impracticable, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines). Therefore, the amendments to rule 205–3 shall take effect on November 10, 2021.

[18] 44 U.S.C. 3501–3520.

currently report that they are compensated with performance-based fees.[19]

We do not, however, expect that the amendments to rule 205–3 will result in substantial costs or benefits to these market participants. As described above, rule 205–3 currently references specific dollar amount thresholds in the rule's net worth and assets-under-management tests in paragraph (d)(1) and, separately, specifies that these thresholds will be adjusted for the effects of inflation by order of the Commission in paragraph (e). The amendments replace the specific dollar amount thresholds with references to the ''most recent order'' issued by the Commission containing the specific dollar amount thresholds adjusted for inflation, consistent with existing paragraph (e) of the rule. The amendments do not themselves change the dollar amount thresholds used in the definition, and, as a result, will not have any effect on the number of clients that meet the rule's definition of ''qualified client.'' Further, we do not believe the amendments will affect the number of advisers charging clients performance fees. The amendments also update the date from ''May 1, 2016'' to ''May 1, 2026'' in paragraph (e) to indicate when the next adjustment will occur, with future adjustments every five years thereafter, although this update does not reflect any change in process or timing from the existing rule.

The amendments to rule 205–3 could help investment advisers and clients more easily identify the current thresholds in the ''qualified client'' definition to the extent that the text of rule 205–3 is inconsistent with the most recent order issued by the Commission or to the extent that investment advisers and clients are unaware of such inconsistency. Relatedly, the updated date in paragraph (e) may help investment advisers and clients more easily determine approximately when the Commission will next issue an order and set expectations for future changes. These effects could incrementally reduce compliance costs; however, we do not expect any such reductions to be substantial.

Similarly, we do not expect any changes to efficiency, competition, or capital formation in the investment adviser industry as a result of the amendments to rule 205–3. While the amendments may make the identification of ''qualified clients'' incrementally easier by clarifying that the current thresholds in the ''qualified client'' definition may be found in the most recent order issued by the Commission, we do not believe that these changes will substantially affect an adviser's ability to identify ''qualified clients'' or raise capital from such clients.

[19] This analysis is based on adviser responses to Item 5.E.6 of Part 1A on Form ADV. This Item requests that an adviser note whether it receives performance-based fees.

IV. Statutory Authority

The Commission is adopting amendments to rule 205–3 under the Advisers Act pursuant to the authority set forth in section 205(e) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–5(e)].

List of Subjects in 17 CFR Part 275

Reporting and recordkeeping requirements, Securities.

Text of Rules

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

Section 275.205–3 is also issued under 15 U.S.C. 80b–5(e).

* * * * *

■ 2. Section 275.205–3 is amended by:
■ a. Revising paragraphs (d)(1)(i) and (d)(1)(ii)(A) introductory text;
■ b. Adding paragraph (d)(5); and
■ c. Revising paragraph (e) introductory text.

The revisions and addition read as follows:

§ 275.205–3 Exemption from the compensation prohibition of section 205(a)(1) for investment advisers.

* * * * *

(d) * * *

(1) * * *

(i) A natural person who, or a company that, immediately after entering into the contract has, under the management of the investment adviser, at least the applicable dollar amount specified in the most recent order;

(ii) * * *

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than the applicable dollar amount specified in the most recent order. For purposes of calculating a natural person's net worth:

* * * * *

(5) The term *most recent order* means the most recently issued Commission order in accordance with paragraph (e) of this section and as published in the **Federal Register**.

(e) *Inflation adjustments.* Pursuant to section 205(e) of the Act, the dollar amounts referenced in paragraphs (d)(1)(i) and (d)(1)(ii)(A) of this section shall be adjusted, by order of the Commission, issued on or about May 1, 2026, and approximately every five years thereafter. The adjusted dollar amounts established in such orders shall be computed by:

* * * * *

By the Commission.

Dated: November 4, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–24525 Filed 11–9–21; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0002; T.D. TTB–174; Ref: Notice No. 187]

RIN 1513–AC54

Establishment of the Verde Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 200-square mile ''Verde Valley'' viticultural area (AVA) in Yavapai County, Arizona. The Verde Valley viticultural area is not located within any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective December 10, 2021.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Verde Valley AVA Petition

TTB received a petition from the Verde Valley Wine Consortium, on behalf of local grape growers and winemakers, proposing the establishment of the ''Verde Valley'' AVA in Yavapai County, Arizona. The proposed Verde Valley AVA covers approximately 200 square miles and is not located within any other AVA. There are 24 commercially-producing vineyards covering a total of approximately 125 acres within the proposed AVA, as well as 11 wineries. The petition states that an additional 40 acres of vineyards are planned for planting in the next few years. According to the petition, the distinguishing features of the proposed Verde Valley AVA are its climate, soils, and topography.

The petition states that the proposed Verde Valley AVA has an average annual rainfall amount that is significantly lower than in the surrounding regions. Due to the low rainfall, vineyard owners within the proposed AVA must use irrigation to ensure adequate hydration for their vines. Additionally, temperatures within the proposed Verde Valley AVA are warmer than in each of the surrounding regions and provide suitable heat and sunlight for photosynthesis. The petition also states that the difference between daytime high temperatures and nighttime low temperatures within the proposed AVA can exceed 30 degrees F, which is a greater difference than found in any of the surrounding regions. Such a significant drop in nighttime temperatures delays grape ripening, lessens the respiration of acids, and increases phenolic development in the grapes.

According to the petition, the proposed Verde Valley AVA is composed of alluvial soils while the surrounding areas consist of stony soils. The high bicarbonate levels in the groundwater of the proposed AVA increase pH within the soil in the proposed AVA, which inhibits nutrient uptake in the vines. However, the petition states that these unfavorable vineyard conditions can be mitigated through rootstock, varietal, and clonal selection that can tolerate and even benefit from these nutrient deficiencies.

The petition also states that the proposed Verde Valley AVA consists of gentle slopes and elevations ranging between 3,000 feet and 5,000 feet. By contrast, the surrounding regions have steep slopes with elevations up to 8,000 feet. The lower elevation of the proposed AVA results in cold air drainage from the higher elevations of the surrounding areas and an increased risk of frost damage. Vineyard owners attempt to mitigate this risk by using inversion fans, protective sprays, and planting late-budding varietals of grapes.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 187 in the **Federal Register** on February 28, 2020 (85 FR 11894), proposing to establish the Verde Valley AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 187. In Notice No. 187, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on April 28, 2020.

Comments Received

In response to Notice No. 187, TTB received a total of eight comments. Commenters included local residents, wine consumers, and other members of

the public. Of the eight comments received, six comments generally supported the establishment of the proposed AVA due to the unique quality and characteristics of the wine produced in the area. Additionally, commenters were supportive of the potential of the AVA designation to provide economic benefits and raise consumer and industry awareness of the local area.

TTB received one comment that supported the establishment of the proposed AVA, but the commenter suggested conducting an environmental and cultural evaluation to assess the impact of the proposed AVA on the surrounding area and its inhabitants. TTB's authority does not encompass evaluating the cultural impact of a proposed AVA on the surrounding regions and its inhabitants.

Further, an environmental impact statement under the National Environmental Policy Act (NEPA) is generally not required for regulations of a strictly administrative nature such as this rule establishing the Verde Valley AVA, as such actions normally do not have a significant effect on the human environment.[1] In evaluating this final rule, TTB found no extraordinary circumstances that could lead to any reasonably foreseeable significant environmental effects with a reasonably close causal relationship to TTB's establishment of the Verde Valley AVA.[2] Potential changes to the local ecosystem such as those concerning the commenter would arise only in attenuated circumstances that are not reasonably foreseeable based on this rulemaking.

Another commenter did not oppose the establishment of the proposed AVA, but voiced concern that it would be difficult to grow grapes in an area prone to prolonged droughts. TTB recognizes the challenges posed by the unique characteristics of the proposed Verde Valley AVA. However, the petition provided evidence that commercial winegrape production does take place within the proposed AVA, which satisfies TTB's requirement for evidence of grape-growing in a proposed AVA. Additionally, the petition states that vineyard owners compensate for the low rainfall amounts by using water-conserving irrigation methods.

[1] *See* Treasury Directive 75–02, ''Department of the Treasury National Environmental Policy Act (NEPA) Program'' (May 6, 2015), Appendix I, ''Categorical Exclusions,'' at CE#A3(a), *available at https://home.treasury.gov/about/general-information/orders-and-directives/td75-02* (site last visited on June 24, 2021).

[2] *See* 40 CFR 1508.1(g) (Council on Environmental Quality regulatory definition of *effects* or *impacts* under NEPA).

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 187, TTB finds that the evidence provided by the petitioner supports the establishment of the Verde Valley AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the ''Verde Valley'' AVA in Yavapai County, Arizona, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the Verde Valley AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text. The Verde Valley AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Verde Valley AVA, its name, ''Verde Valley,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name ''Verde Valley'' in a brand name, including a trademark, or in another label reference to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Verde Valley AVA will not affect any existing AVA. The establishment of the Verde Valley AVA will allow vintners to use ''Verde Valley'' as an appellation of origin for wines made primarily from grapes grown within the Verde Valley AVA if the wines meet the eligibility requirements for the appellation.

Bottlers who wish to label their wines with ''Verde Valley'' as an appellation of origin must obtain a new Certificate of Label Approval (COLA) for the label, even if the currently approved label already contains another appellation of origin. Please do not submit COLA requests to TTB before the date shown in the **DATES** section of this document, or your request will be rejected.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Selina M. Ferguson of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.280 to read as follows:

§ 9.280 Verde Valley AVA.

(a) *Name.* The name of the viticultural area described in this section is ''Verde Valley''. For purposes of part 4 of this chapter, ''Verde Valley'' is a term of viticultural significance.

(b) *Approved maps.* The 9 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Verde Valley viticultural area are titled:

(1) Camp Verde, Ariz., 1969;
(2) Clarkdale, Ariz., 1973;
(3) Cornville, Ariz., 1968;
(4) Cottonwood, Ariz., 1973;
(5) Lake Montezuma, Ariz., 1969;
(6) Middle Verde, Ariz., 1969;
(7) Munds Draw, Ariz., 1973;
(8) Page Springs, Ariz., 1969; and
(9) Sedona, Ariz., 1969.

(c) *Boundary.* The Verde Valley viticultural area is located in Yavapai County, Arizona. The boundary of the Verde Valley viticultural area is as described as follows:

(1) The beginning point of the boundary is at the intersection of the 3,800-foot elevation contour and the northern boundary of Section 32, T17N/R3E, on the Clarkdale Quadrangle. From the beginning point, proceed east along the northern boundary of Section 32 until its intersection with the Verde River; then

(2) Proceed north along the Verde River to its intersection with the western boundary of Section 21, T17N/R3E; then

(3) Proceed north along the western boundaries of Sections 21 and 16 to the intersection with the 3,800-foot elevation contour; then

(4) Proceed southerly then easterly along the 3,800-foot elevation contour, crossing onto the Page Springs Quadrangle, to its intersection with Bill Gray Road in Section 18, T16N/R4E; then

(5) Proceed north along Bill Gray Road to its intersection with an unnamed, unimproved road known locally as Forest 761B Road in Section 32, T17N/R4E; then

(6) Proceed east, then northeast, along Forest 761B Road to its intersection with Red Canyon Road in Section 26, T17N/R4E; then

(7) Proceed south along Red Canyon Road to its intersection with U.S. Highway 89 Alt. in Section 35, T17N/R4E; then

(8) Proceed east over U.S. Highway 89 Alt. in a straight line to and unnamed, unimproved road known locally as Angel Valley Road, and proceed southeasterly along Angel Valley Road as it becomes a light-duty road, crossing over Oak Creek, and continuing along the southernmost segment of Angel Valley Road to its terminus at a structure on Deer Pass Ranch in Section 12, T16N/R4E; then

(9) Proceed south in a straight line to the 3,800-foot elevation contour in Section 12, T16/NR4E; then

(10) Proceed south-southeasterly along the 3,800-foot elevation contour, crossing over the southwestern corner of the Sedona Quadrangle and onto the Lake Montezuma Quadrangle, to the intersection of the contour line with an unnamed creek in Section 6, T15N/R5E; then

(11) Proceed southwesterly along the unnamed creek until its intersection with the 3,600-foot elevation contour in Section 1, T15N/R4E; then

(12) Proceed southerly along the 3,600-foor elevation contour, crossing briefly onto the Cornville Quadrangle and then back onto the Lake Montezuma Quadrangle, to the intersection of the elevation contour with an unnamed secondary highway known locally as Cornville Road in Section 7, T15N/R5E; then

(13) Proceed southeast along Cornville Road to its intersection with the 3,600-foot elevation contour in Section 20, T15N/R5 E; then

(14) Proceed easterly, then southerly, along the elevation contour to its intersection with the boundary of the Montezuma Castle National Monument in Section 36, T15N/R5E; then

(15) Proceed west, southeast, southwest, and then east along the boundary of the Montezuma Castle National Monument to its intersection with range line separating R5E and R6E; then

(16) Proceed south along the R5E/R6E range line, crossing onto the Camp Verde Quadrangle, to the intersection of the range line and the southeastern corner of Section 12, T14N/R5E; then

(17) Proceed west along the southern boundaries of Sections 12, 11, 10, and 9 to the intersection of the southern boundary of Section 9 and the Montezuma Castle National Monument; then

(18) Proceed along the boundary of the Montezuma Castle National Monument in a counterclockwise direction to the intersection of the monument boundary and the 3,300-foot elevation contour in Section 16, T14N/R5E; then

(19) Proceed southerly, then southeasterly, along the 3,300-foot elevation contour to its intersection with the eastern boundary of Section 18, T13N/R6E; then

(20) Proceed south along the eastern boundary of Section 18 to its intersection with the southern boundary of Section 18; then

(21) Proceed west along the southern boundaries of Sections 19, 13, 14, 15, 16, 17, and 18, T13N/R53, and Section 13, T13N/R4E, to the intersection with the 3,800-foot elevation contour in Section 13, T13N/R4E; then

(22) Proceed northwesterly along the 3,800-foot elevation contour, crossing over the Middle Verde and Cornville Quadrangles and onto the Cottonwood Quadrangle, to the intersection of the elevation contour with an unnamed creek in Del Monte Gulch in Section 5, T15N/R3E; then

(23) Proceed westerly along the unnamed creek to its intersection with the 5,000-foot elevation contour in Section 26, T16N/R2E; then

(24) Proceed northerly along the 5,000-foot elevation contour, crossing over the Clarkdale Quadrangle and onto the Munds Draw Quadrangle, to the intersection of the elevation contour with a pipeline in Section 4, T16N/R2E; then

(25) Proceed southeasterly along the pipeline, crossing onto the Clarkdale Quadrangle, and continuing northeasterly along the pipeline to its intersection with the 3,800-foot elevation contour in Section 32, T17N/R3E; then

(26) Proceed northerly along the 3,800-foot contour, returning to the beginning point.

Signed: August 24, 2021.

Mary G. Ryan,

Administrator.

Approved: September 24, 2021.

Timothy E. Skud,

Deputy Assistant Secretary, Tax, Trade, and Tariff Policy.

[FR Doc. 2021–23978 Filed 11–9–21; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2020–0012; T.D. TTB–175; Ref: Notice No. 197]

RIN 1513–AC64

Establishment of the Lower Long Tom Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 25,000-acre ''Lower Long Tom'' viticultural area in portions of Lane and Benton Counties, Oregon. The

viticultural area is located entirely within the existing Willamette Valley viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective December 10, 2021.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission to TTB of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Lower Long Tom Petition

TTB received a petition from Dieter Boehm, owner of High Pass Vineyard and Winery, proposing the establishment of the ''Lower Long Tom'' AVA. The proposed AVA is located in portions of Lane and Benton Counties, Oregon, and lies entirely within the established Willamette Valley AVA (27 CFR 9.90) and does not overlap any other existing or proposed AVA. Within the approximately 25,000-acre proposed AVA, there are 22 commercial vineyards which cover a total of approximately 492 acres, as well as 10 wineries. The distinguishing features of the proposed Lower Long Tom AVA are its topography, soils, and climate.

The proposed Lower Long Tom AVA takes its name from the Long Tom River, which runs along the eastern boundary of the proposed AVA. The proposed AVA is located along the ''lower,'' or downstream, portion of the river, between Fern Ridge Lake and the Willamette River. The topography of the proposed AVA is characterized by chains of rolling hills separated by west-east trending valleys that were cut by the tributaries of the Long Tom River. Elevations range from approximately 1,000 feet along ridgelines on the western edge of the proposed AVA boundary to approximately 550 feet before dropping to the Willamette Valley floor. The steepest slope angles are about 45 percent, with the average slope angle being about 20 percent. To the west of the proposed Lower Long Tom AVA are the high, rugged elevations of the Coast Range, which rise to over 3,000 feet. East of the proposed AVA are the lower, flatter elevations of the Willamette Valley floor. South of the proposed AVA are Fern Ridge Lake, the watershed of the upper Long Tom River, and a series of hills with lower elevations than are found in the proposed AVA. To the north of the proposed AVA, the elevations descend to the floor of the Willamette Valley.

The most common soils in the proposed AVA are Bellpine and Bellpine/Jory complex. Bellpine soil is derived from decomposed sedimentary marine uplift over a sandstone or siltstone substrate. These soils are relatively shallow and well-drained. The Bellpine/Jory complex combines sedimentary and volcanic components and has a slightly greater depth and water-holding capacity than the Bellpine soils. Soils north of the proposed Lower Long Tom River AVA are primarily Jory soils. To the east of the proposed AVA, soils are described as deep alluvial river bottom soils. South of the proposed AVA, the soils are mostly Bellpine, as are found in the proposed AVA, but without the Bellpine/Jory complex. The predominate soils west of the proposed AVA are from the Witzel and Ritner series, which are both derived from decomposed igneous and contain varying amounts of rocks and cobbles.

Prairie Mountain, a tall mountain in the Coast Range due west of the proposed AVA, blocks cool Pacific air from entering the proposed Lower Long Tom AVA. Instead, the marine air flows into the regions to the north and south

of the proposed AVA. As a result, growing season temperatures within the proposed AVA are generally warmer than in regions that are more exposed to the cool marine air. From 2012 to 2016, the average harvest date for Pinot Noir grapes within the proposed AVA ranged from September 17 to September 26. By contrast, the regions to the north and south of the proposed AVA, which are more exposed to cool marine air, generally have later harvest dates. From 2012 to 2016, the average harvest date for Pinot Noir grapes grown in the region north of the proposed AVA ranged from September 24 to October 2, while harvest dates to the south ranged from September 27 to September 28.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 197 in the **Federal Register** on October 23, 2020 (85 FR 67475), proposing to establish the Lower Long Tom AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 197.

In Notice No. 197, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, given the proposed AVA's location within the Willamette Valley AVA, TTB solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the established AVA. TTB also requested comments on whether the geographic features of the proposed AVA are so distinguishable from the established Willamette Valley AVA that the proposed AVA should no longer be part of the established AVA. The comment period closed December 22, 2020.

In response to Notice No. 197, TTB received one comment. The comment did not specifically support or oppose the proposed AVA. The comment stated that, although many agricultural lands provide necessary food crops for the community, wine grapes are not a necessity. The comment then expressed concern as to ''who will bear the cost of preparing this land,'' and ''how this project will be funded.'' Finally, the comment wondered if there were any other uses for the land that would ''better serve the community'' than growing wine grapes, and how the establishment of the AVA may ''impact businesses and projects outside of alcohol producers.''

In response, TTB notes that establishment of an AVA for use on a wine label is simply intended to provide consumers with more information about the wine they purchase, including where the grapes used to make the wine were grown. The establishment of an AVA recognizes the existing natural features of a particular region (such as the climate, soil, topography, or geology) and how they differ from the natural features of the surrounding areas, and that wine grapes grown in that region face a different set of growing conditions than grapes grown elsewhere.

Further, TTB's establishment of an AVA only addresses the use of AVA names on labels, and does not convey any rules regarding land use within an AVA. Establishing an AVA does not require that the land in the AVA be used for any additional grape growing, require the land to be used only for grape growing, or require the land be prepared, modified, or used in any way. Also, TTB's establishment of an AVA does not require or provide funding for any projects within an AVA.

TTB Determination

After careful review of the petition and the comment received in response to Notice No. 197, TTB finds that the evidence provided by the petitioner supports the establishment of the Lower Long Tom AVA. Accordingly, TTB establishes the ''Lower Long Tom'' AVA in portions of Lane and Benton Counties, Oregon, effective 30 days from the publication date of this document.

TTB has also determined that the Lower Long Tom AVA will remain part of the established Willamette Valley AVA. As discussed in Notice No. 197, the Lower Long Tom AVA shares some broad characteristics with the established AVA. For example, the Lower Long Tom AVA and the Willamette Valley AVA are generally under 1,000 feet. Additionally, both areas contain mostly silty and clay loam soils. However, the Lower Long Tom AVA does have some features that differentiate it from the Willamette Valley AVA. For instance, a chain of hills comprises most of the Lower Long Tom AVA, whereas a broad, treeless plain covers most of the Willamette Valley AVA. Additionally, because much of the cool marine air is diverted away from the AVA, growing season temperatures are generally warmer and harvest dates are generally earlier within the Lower Long Tom AVA than within other less-sheltered regions of the Willamette Valley.

Boundary Description

See the narrative description of the boundary of the Lower Long Tom AVA in the regulatory text published at the end of this final rule.

Maps

The petitioners provided the required maps, and they are listed below in the regulatory text. The Lower Long Tom AVA boundary may also be viewed on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of the Lower Long Tom AVA, its name, ''Lower Long Tom,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulations clarifies this point. Consequently, wine bottlers using the name ''Lower Long Tom'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin.

The establishment of the Lower Long Tom AVA will not affect the existing Willamette Valley AVA, and any bottlers using ''Willamette Valley'' as an appellation of origin or in a brand name for wines made from grapes grown within the Willamette Valley will not be affected by the establishment of this

new AVA. The establishment of the Lower Long Tom AVA will allow vintners to use ''Lower Long Tom'' and ''Willamette Valley'' as appellations of origin for wines made primarily from grapes grown within the Lower Long Tom AVA if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.281 to read as follows:

§ 9.281 Lower Long Tom.

(a) *Name.* The name of the viticultural area described in this section is ''Lower Long Tom''. For purposes of part 4 of this chapter, ''Lower Long Tom'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Lower Long Tom viticultural area are titled:

(1) Cheshire, Oregon, 1984;

(2) Horton, Oregon, 1984;

(3) Glenbrook, Oregon, 1984; and

(4) Monroe, Oregon, 1991.

(c) *Boundary.* The Lower Long Tom viticultural area is located in Benton and Lane Counties, in Oregon. The boundary of the Lower Long Tom viticultural area is as described as follows:

(1) The beginning point is on the Cheshire map at the intersection of Franklin Road and the 360-foot elevation contour in Section 43, T16S/R5W. From the beginning point, proceed west on Franklin Road to its intersection with Territorial Road (known locally as Territorial Highway); then

(2) Proceed southwesterly along Territorial Highway to its intersection with an unnamed, unimproved road north of Butler Road in Section 44, T16S/R5W; then

(3) Proceed west in a straight line to the western boundary of Section 29, T16S/R5W; then

(4) Proceed north along the western boundary of Section 29 to the southern boundary of Section 57, T16S/R5W; then

(5) Proceed northwest in a straight line to the right angle in the western boundary of Section 57, T16S/R5W; then

(6) Proceed west in a straight line, crossing through Sections 58 and 38, to the intersection of Sections 23, 24, 25, and 26, T16S/R6W; then

(7) Proceed north along the western boundary of Section 24 to the first intersection with the 800-foot elevation contour; then

(8) Proceed northerly, then northwesterly along the 800-foot elevation contour, crossing onto the Horton map, to the intersection of the 800-foot elevation contour and an unnamed, unimproved road with a marked 782-foot elevation point in Section 10, T16S/R6W; then

(9) Proceed west in a straight line to the 1,000-foot elevation contour; then

(10) Proceed northerly along the 1,000-foot elevation contour, crossing onto the Glenbrook map, to the elevation contour's third intersection with the Lane–Benton County line in Section 10, T15S/R6W; then

(11) Proceed east along the Lane–Benton County line, crossing onto the Monroe map, to the R6W/R5W range line; then

(12) Proceed north along the R6W/R5W range line to its intersection with Cherry Creek Road; then

(13) Proceed northeasterly along Cherry Creek Road to its intersection with Shafer Creek along the T14S/T15S township line; then

(14) Proceed northeasterly along Shafer Creek to its intersection with the 300-foot elevation contour; then

(15) Proceed easterly along the 300-foot elevation contour, crossing Territorial Highway, to the intersection of the elevation contour with the marked old railroad grade in Section 33/T14S/R5W; then

(16) Proceed south along the old railroad grade to its intersection with the southern boundary of Section 9, T15S/R5W; then

(17) Proceed west along the southern boundary of Section 9 to its intersection with Territorial Highway; then

(18) Proceed south along Territorial Highway to its intersection with the 360-foot elevation contour in Section 16; T15S/R5W; then

(19) Proceed southwesterly along the 360-foot elevation contour, crossing Ferguson Creek, and continuing generally southeasterly along the elevation contour, crossing onto the Cheshire map and crossing over Owens Creek and Jones Creek, to the point where the elevation contour crosses Bear Creek and turns north in Section 52; T16S/R5W; then

(20) Continue northeasterly along the 360-foot elevation contour to the point where it turns south in the town of Cheshire; then

(21) Continue south along the 360-foot elevation contour and return to the beginning point.

Signed: August 24, 2021.

Mary G. Ryan,

Administrator.

Approved: September 24, 2021.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2021–23979 Filed 11–9–21; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0799]

Safety Zone; Four Seasons Hotel Fireworks Display Event, New Orleans, LA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a temporary safety zone for a fireworks display located on the navigable waters

of the Lower Mississippi River between Mile Marker (MM) 94 and MM 95. This action is needed to provide for the safety of life on these navigable waterways during the event. During the enforcement periods, the operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulations in 33 CFR 165.845 will be enforced from 9:00 p.m. to 10:00 p.m. on November 17, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander William Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2246, email *William.A.Stewart@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce safety zone located in 33 CFR 165.845 for the Four Seasons Hotel Fireworks Display event. The regulations will be enforced from 9:00 p.m. through 10:00 p.m. on November 17, 2021. This action is being taken to provide for the safety of life on navigable waterways during this event, which will be located between MM 94 and MM 95 above Head of Passes, Lower Mississippi River, LA. During the enforcement periods, if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

Dated: October 29, 2021.

W.E. Watson,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2021–24589 Filed 11–9–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 62

RIN 2900–AR15

Supportive Services for Veterans Families

AGENCY: Department of Veterans Affairs

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern the Supportive Services for Veteran Families (SSVF) Program. This interim final rule will provide a more effective subsidy to veterans in high-cost rental markets; increase the cap on General Housing Assistance to reflect increased costs; and extend the ability of SSVF grantees to provide emergency housing for the most vulnerable, unsheltered veterans and their families.

DATES:

Effective date: This interim final rule is effective November 10, 2021.

Comment date: Comments must be received on or before January 10, 2022.

ADDRESSES: Comments may be submitted through *www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AR15—Supportive Services for Veterans Families.'' Comments received will be available at *regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: John Kuhn, National Director, Supportive Services for Veteran Families. 810 Vermont Avenue NW, Washington, DC 20420. (202) 632–8596 (this is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: VA is amending its regulations that govern the Supportive Services for Veteran Families (SSVF) Program under section 2044 of title 38 United States Code (U.S.C.), which requires the Secretary to provide financial assistance to eligible entities, approved under that section, to provide and coordinate the provision of supportive services for very low-income veteran families occupying permanent housing.

VA implements the SSVF Program in 38 CFR part 62. Through the SSVF Program, VA awards supportive services grants to private non-profit organizations or consumer cooperatives to provide or coordinate the provision of supportive services to very low-income veteran families who are residing in permanent housing and are at risk of becoming homeless. We note that, for the purposes of this section, permanent housing means community-based housing without a designated length of stay where an individual or family has a lease in accord with State and Federal law that is renewable and terminable only for cause. Examples of permanent housing include, but are not limited to, a house or apartment with a month-to-month or annual lease term or home ownership. A very low-income veteran family will be considered to be occupying permanent housing if the very low-income veteran family: Is residing in permanent housing and is at risk of becoming homeless but for the grantee's assistance; is lacking a fixed, regular, and adequate nighttime residence, is at risk of remaining in that state if they do not receive the grantee's assistance, and is scheduled to become residents of permanent housing within 90 days; or meets one of the conditions listed above after exiting permanent housing within the previous 90 days to seek other housing that is responsive to their needs and preferences.

Part 62 of 38 CFR details how the program is administered, to include the types of services, the application and scoring process, and other requirements and limitations associated with the program. This rulemaking amends 38 CFR 62.34, which establishes other supportive services that grantees may provide, which are necessary for maintaining independent living in permanent housing and housing stability. Specifically, this rulemaking will provide a more effective subsidy to veterans in high-cost rental markets; increase the cap on General Housing Assistance to reflect increased costs; and extend the ability of SSVF grantees to provide emergency housing for the most vulnerable, unsheltered veterans and their families.

Most critically, this rulemaking amends 38 CFR 62.34(a)(8) to provide a more effective subsidy to veterans in high-cost rental markets. A more effective subsidy is considered urgent and time sensitive as it will significantly improve the level of rental support available to homeless and at-risk Veterans. These Veterans currently face substantial risks of eviction and potential homelessness which constitutes a serious and imminent risk to their health. These risks are now prevalent and, with the end of eviction moratoriums, cannot be forestalled. Delays in issuing this interim rule will delay a potentially life-saving intervention.

38 CFR 62.34(a)(8)

A shallow subsidy offered recurring rental assistance at a fixed rate for a longer period in comparison to Rapid Rehousing. The expectation was that this sustained support would expand housing options and increase the Veteran households' ability to meet other costly living expenses. As a result, the SSVF Program Office embarked on an initiative in October 2019 to offer the Shallow Subsidy service in select communities.

The provision of shallow subsidy funds was implemented under 38 CFR 62.34(a)(8). VA is amending the fifth sentence of 38 CFR 62.34(a)(8) to provide a more effective subsidy to veterans in high-cost rental markets. We are also reorganizing current § 62.34(a)(8) for clarity, without changing the meaning of such section.

Paragraph (a) establishes the types of rental assistance that may be provided, such as payment of rent, penalties, or fees, to help the participant remain in permanent housing or obtain permanent housing. Paragraph (a)(8) currently states, in part, that extremely low-income veteran families and very low-income veteran families who meet the criteria of § 62.11 may be eligible to receive a rental subsidy for a 2-year period without recertification. The existing paragraph further states that the maximum amount of rental subsidy is 35 percent of the applicable Fair Market Rent (FMR) published by Housing and Urban Development (HUD).

First, we are increasing the subsidy from 35 percent to 50 percent in § 62.34(a)(8). We have received strong feedback from the community that increasing the Shallow Subsidy rate up to a maximum of 50 percent is necessary to provide meaningful assistance to the very low and extremely low-income Veteran households eligible for SSVF services. The housing affordability gap for these households is too wide to be bridged with a 35 percent subsidy. The National Low Income Housing Coalition (''The Gap: A Shortage of Affordable Rental Homes'', *https://reports.nlihc.org/gap/about*) reports that 70 percent of all extremely low-income families pay more than half their income on rent (HUD defines affordable housing as paying no more than 30 percent of income on housing costs) due to the acute shortage of affordable housing. Increasing the subsidy to a maximum of 50 percent will bring more private sector housing units into the range of housing affordability for SSVF participants. Grantees will have the option of setting a subsidy rate of less than 50 percent, as 50 percent will be the maximum for the rental subsidy, on the condition that the subsidy rate set by the grantee is sufficient to sustain housing up to the 50 percent level. As these subsidies only support rent (utilities for instance are not supported through this subsidy), and can be set at a rate of no more than 50 percent of the rent, the overall subsidy is still less than half of the veteran's housing costs. The term shallow subsidy is consistent with this approach as the veteran will still be responsible for most of the housing costs. This change is expected to promote housing stability, which is central to SSVF's mission, and will support VA's goal of ending homelessness among Veterans.

We are also amending the basis for the rental subsidy for eligible participant families to be a maximum of 50 percent of the reasonable rent as defined in § 62.34(a)(4). VA defines rent reasonableness in § 62.34(a)(4) to mean the total rent charged for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private unassisted market and must not be in excess of rents being charged by the property owner during the same time period for comparable non-luxury unassisted units.

The reasons for this change are several. First, VA has received feedback from SSVF grantees in California stating that using the FMR reduces the amount of subsidies payable to participants because HUD's FMR rental rates consistently lag behind the true rental rates in the market, resulting in a subsidy of less than the intended 35 percent of the rental rates in the market. HUD sets the FMR at the 40th percentile of gross rents for typical, non-substandard rental units occupied by recent movers in a local housing market, meaning 60 percent of units will have rental costs that exceed the FMR. Furthermore, HUD counts households who moved in within the past 15 to 22 months as recent movers for purposes of determining the FMR. This results in rates that do not include the impact of recent rental inflation. Together, these policies set the FMR at below market rates.

In responding to the COVID–19 health emergency, SSVF obtained a modification under section 301 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5141) to employ a reasonable rent standard instead of the FMR. On March 31, 2020, HUD, also responding to the COVID–19 health emergency, issued a waiver of the Continuum of Care (CoC) program regulations at 24 CFR 578.49(b)(2) which prohibit CoC program recipients from using CoC funds to lease units above the FMR. In implementing the waiver of the FMR restriction, CoC program recipients were still required to ensure that units leased with CoC funds meet the CoC program's rent reasonableness standard. HUD explained that its waiver of FMR restriction will ''assist recipients in locating additional units to house individuals and families experiencing homelessness and reduce the spread and harm of COVID–19.''

VA agrees with the SSVF grantees and believes that using a reasonable rent would more accurately represent the rental rates by providing a real time measure of rent for comparable units within the same rental market. VA also believes that the reasonable rent standard should continue to apply after the COVID–19 public health emergency. In addition, SSVF already uses rent reasonableness for purposes of determining rental assistance paid by grantees to its participants under § 62.34(a)(4) and proposes to apply that definition to § 62.34(a)(8) to support internal consistency and reduce administrative errors and burdens as this allows grantees to have a single standard for determining allowable rental assistance.

38 CFR 62.34(e)(2)

VA is amending 38 CFR 62.34(e)(2) in order to increase the cap on general housing stability assistance. Paragraph (e) establishes the general housing stability assistance. Paragraph (e)(2) currently states that a grantee may pay directly to a third party (and not to a participant), in an amount not to exceed $1,500 per participant during any 2-year period, beginning on the date that the grantee first submits a payment to a third party for certain types of expenses. The current cap of $1,500 was set with the publication of § 62.34(e)(2) on February 24, 2015. See 80 FR 9611. Due to inflation, the value of that cap has eroded with time.

The Consumer Price Index for all Urban Consumers (CPI–U) is a measure of the average change over time in the prices paid by urban consumers for a variety of goods and services. It provides indexes for various geographic areas and price data for food, clothing, shelter, fuels, transportation, medical care, drugs, and other goods and services that people buy for day-to-day living. General housing stability assistance funds can be provided for some of the goods and services measured by the CPI–U such as uniforms, tools, kitchen utensils, and bedding. The CPI–U is a useful indicator of the increasing annual costs of these items. Between 2015 and 2021 the cumulative CPI–U, not corrected for compounding, was 14.4 percent. Assuming an annual CPI of 3 percent for 2022, and including a modest effect for compounding interest, we are increasing the $1,500 cap to $1,800 so that the purchasing power of the $1,500 cap set on February 24, 2015 is restored. Additionally, there will be an automatic adjustment to this cap so that it increases annually based on the CPI–U.

38 CFR 62.34(f)

Currently, 38 CFR 62.34(f)(2) states that placement for a veteran and his or her spouse with dependent(s) in emergency housing may not exceed 45 days. We are amending 38 CFR 62.34(f)(2) to provide additional assistance to vulnerable, unsheltered homeless veteran families. We note that, for the purpose of this part, veteran

family means a veteran who is a single person or a family in which the head of household, or the spouse of the head of household, is a veteran, as defined in 38 CFR 62.2.

Through the SSVF program, VA is seeking to engage unsheltered veterans who typically have higher barriers to permanent housing placement. VA finds that in some high rental markets, particularly when working with high barrier households, 45 days was insufficient time to complete a permanent housing placement. To that end, we are increasing the current 45-day limit, stated in § 62.34(f)(2), to 60 days. This increase will provide additional time in emergency housing to the most vulnerable veteran population of unsheltered veterans and their families.

Administrative Procedure Act

The Administrative Procedure Act (APA), codified at 5 U.S.C. 553, generally requires that agencies publish substantive rules in the **Federal Register** for notice and comment. These notice and comment requirements generally do not apply to ''a matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts.'' 5 U.S.C. 553(a)(2). However, 38 U.S.C. 501(d) requires that VA comply with the notice and comment requirements in 5 U.S.C. 553 for matters relating to loans, grants, or benefits, notwithstanding section 553(a)(2). Thus, as this rulemaking relates to the SSVF, VA is required to comply with the notice and comment requirements of 5 U.S.C. 553.

However, pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

In addition, section 553(d) of the APA requires a 30-day delayed effective date following publication of a rule, except for ''(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.''

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Secretary has concluded that there is good cause to publish this rule without prior opportunity for public comment and to publish this rule with an immediate effective date to address the needs of service members and veterans who are homeless or at imminent risk of homelessness. Delay in the implementation of this rule would be impracticable and contrary to the public interest. More than 7 million adults currently live in households that are behind on rent payments. As of August 30, 2021, roughly 3.6 million individuals in the U.S. said they are ''very likely'' or ''somewhat likely'' to face eviction in the next two months, according to the U.S. Census Bureau's Household Pulse Survey. (*https://www.census.gov/data/tables/2021/demo/hhp/hhp36.html*). As seven percent of the population are veterans, this could mean nearly half a million veterans and their family members face eviction with tens of thousands becoming homeless. Earlier Centers for Disease Control and Prevention (CDC) eviction moratoriums established to ameliorate this risk are no longer in effect. The results for those facing eviction and potential homelessness include serious and imminent risks to their health. The CDC reports, homelessness is closely connected to declines in physical and mental health; homeless persons experience high rates of health problems such as HIV infection, alcohol and drug abuse, mental illness, tuberculosis, and other conditions (*https://www.cdc.gov/phlp/publications/topic/resources/resources-homelessness.html*). Additionally, the CDC reports, ''people experiencing homelessness are disproportionately affected by COVID–19.'' ''Homeless services are often provided in congregate (group) settings, which could make the spread of infection easier. Because many people experiencing homelessness are older adults or have underlying medical conditions, they may also be at increased risk for severe illness from COVID–19.'' (*https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/homelessness.html*). These risks are now prevalent and, with the end of eviction moratoriums, cannot be forestalled. Delays in issuing this interim rule will delay a potentially life-saving intervention.

On September 4, 2020, the CDC and the Department of Health and Human Services (HHS) published an Order under Section 361 of the Public Health Service Act to temporarily halt residential evictions to prevent the further spread of COVID–19. 85 FR 55292. This Order was effective from September 4, 2020, through December 31, 2020, and was extended until July 31, 2021. 86 FR 34010. On August 3, 2021, CDC issued a subsequent, more narrowly tailored eviction order to temporarily halt evictions in United States counties experiencing substantial or high rates of community transmission of COVID–19. 86 FR 43244. The order was then challenged in the DC district court, which vacated the order on a nationwide basis, but stayed its judgment pending appeal. The Supreme Court then vacated the district court's stay, effectively ending the moratorium order. *See Ala. Ass'n of Realtors* v. *Dep't of Health and Human Servs.,* 594 U.S. (2021).

The Secretary's decision to increase the subsidy in § 62.64(a)(8) from 35% to 50% requires immediate effect to ensure rental supports are immediately available to very low-income veterans at-risk of becoming homeless, particularly given that the COVID–19 pandemic, with its sustained adverse economic consequences, may have reduced or limited their personal resources.

The U.S. Department of Treasury's Emergency Rental Assistance Program (EARP) primarily pays rental arrears; financial assistance for prospective rent payments is limited. Unlike the rental subsidy proposed by this regulation, ERAP would not make rent more affordable. The increased subsidy would be provided in addition to the ERAP funds. Other state and local resources to assist veterans with rent, outside those that are federally supported such as ERAP, are very limited and not available or insufficient in most areas of the country. Many veterans and grantees report it has been difficult to access these resources. By making rent affordable, the rental subsidy proposed by this regulation allows veteran families to sustain their housing, giving landlords less cause to proceed with evictions.

Furthermore, widespread reports of soaring rental prices (''Rent Prices Are Soaring as Americans Flock Back to Cities'' Washington Post, July 10, 2021) will leave many veteran families at-risk even if rent arrears stemming from the COVID–19 induced economic crisis have been paid by programs such as SSVF or ERAP. The low-income families served by SSVF will need the elevated levels of support to address the growing gap between their income and rental costs. The risk of becoming homeless will become particularly acute for many low-income families now that the CDC eviction moratorium is no longer in effect. Although eviction moratoriums remain in effect in a few states and municipalities, these policy responses are temporary and do not provide a permanent solution for protecting the vast majority of at-risk veterans who continue to face eviction

and potential homelessness. Furthermore, eviction moratoriums do not address the underlying issue of rent affordability that will continue to place these veteran households at risk once these moratoriums end.

SSVF has used the modification obtained under 42 U.S.C. 5141 for COVID–19 to increase the resources available through the rental subsidy that is made available in § 62.34(a)(8). This has allowed SSVF to use ''rent reasonableness'' as the basis for the rental subsidy, rather than the FMR. While this effect only modestly increases the level of rental subsidy, it remains an important change and needs to continue even once the public health emergency ends.

For these reasons, the Secretary has concluded that ordinary notice and comment procedures would be impracticable and contrary to the public interest as delay will have significant negative health consequences to homeless and at-risk veterans and is accordingly issuing this rule as an interim final rule. However, the Secretary will consider and address comments that are received within 60 days after the date that this interim final rule is published in the **Federal Register** and address them in a subsequent **Federal Register** document announcing a final rule incorporating any changes made in response to the public comments.

Paperwork Reduction Act

This interim 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 interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This interim final rule will only impact those entities that choose to participate in the SSVF Program. Small entity applicants will not be affected to a greater extent than large entity applicants. Small entities must elect to participate, and it is considered a benefit to those who choose to apply. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

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. The Office of Information and Regulatory Affairs has determined that this rule is an economically significant regulatory action under Executive Order 12866. VA has determined that there are costs and transfers associated with the provisions of this rulemaking. The costs for § 62.34(a)(8) are estimated to be between a lower bound of $204.2M in FY2022 and $895M over a five-year period (FY2022–FY2026) and an upper bound of $291.8M in FY2022 and $1.65B over a five-year period. The costs for 62.34(e)(2) are estimated to be $720,000 in FY2022 and $3.8M over a five-year period.

The full Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are: 64.009, Veterans Medical Care Benefits, and 64.033, VA Supportive Services for Veteran Families Program.

Congressional Review Act

The Office of Information and Regulatory Affairs in the Office of Management and Budget has determined that this regulatory action is a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), 5 U.S.C. 801–808, because it may result in an annual effect on the economy of $100 million or more. 5 U.S.C. 804(2). In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this Regulation and the Regulatory Impact Analysis (RIA) associated with the Regulation. However, for the reasons explained above, VA has found that there is good cause to publish this rule with an immediate effective date, pursuant to 5 U.S.C. 808(2).

List of Subjects in 38 CFR Part 62

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Grant programs—health, Grants—housing and community development, Grant programs—veterans, Health care, Homeless, Housing, Indian—lands, Individuals with disabilities, Low and moderate income housing, Manpower training program, Medicaid, Medicare, Public assistance programs, Public housing, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Social security, Supplemental security income (SSI), Travel and transportation expenses, Unemployment compensation.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on August 26, 2021, 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.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, we are amending 38 CFR part 62 as follows:

PART 62—SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAM

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 38 U.S.C. 501, 2044, and as noted in specific sections.

■ 2. Amend § 62.34 by revising paragraphs (a)(8), (e)(2) introductory text, and (f)(2) to read as follows:

§ 62.34 Other supportive services.

* * * * *

(a) * * *

(8) Extremely low-income veteran families and very low-income veteran families who meet the criteria of § 62.11 may be eligible to receive a rental subsidy as follows:

(i) For a 2-year period without recertification.

(ii) The applicable counties will be published annually in the **Federal Register**. A family must live in one of these applicable counties to be eligible for this subsidy. The counties will be chosen based on the cost and availability of affordable housing for both individuals and families within that county.

(iii) The maximum amount of this rental subsidy is 50 percent of reasonable rent as defined by paragraph (a)(4) of this section. Grantees must collaborate with their local Continuum of Care (CoC) as defined at 24 CFR 578.3 to determine the proper subsidy amounts to be used by all grantees in each applicable county.

(iv) Grantees must provide a letter of support from their local CoC to the Supportive Services for Veteran Families (SSVF) Program Office when requesting VA approval of this subsidy. The SSVF Program Office must approve all subsidy requests before the subsidy is used.

(v) Very low-income veteran families may receive this subsidy for a period of two years before recertification minus the number of months in which the recipient received the rental assistance provided under paragraph (a)(1) of this section.

(vi) Extremely low-income veteran families may receive this subsidy for up to a 2-year period before recertification following receipt of rental assistance under paragraph (a)(1) of this section.

(vii) For any month, the total rental payments provided to a family under this paragraph (a)(8) cannot be more than the total amount of rent. Payment of this subsidy by a grantee must conform to the requirements set forth in paragraphs (a)(2) through (7) of this section. The rental subsidy amount will not change for the veteran family in the second year of the two-year period, even if the annual amount published changes.

(viii) A veteran family will not need to be recertified as a very low-income veteran family as provided for by § 62.36(a) during the initial two-year period. After an initial two-year period, a family receiving this subsidy, or a combination of the rental assistance under paragraph (a)(1) of this section and this subsidy, may continue to receive rental payments under this section, but would require recertification at that time and once every two years.

* * * * *

(e) * * *

(2) A grantee may pay directly to a third party (and not to a participant), in an amount not to exceed $1,800, per participant during any 2-year period, beginning on the date that the grantee first submits a payment to a third party. This cap will be adjusted annually based on the Consumer Price Index for all Urban Consumers (CPI–U). This amount is for the following types of expenses:

* * * * *

(f) * * *

(2) Placement for a veteran and his or her spouse with dependent(s) may not exceed 60 days.

* * * * *

[FR Doc. 2021–24496 Filed 11–9–21; 8:45 am]

BILLING CODE 8320–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3040

[Docket No. RM2020–8]

Update to Competitive Product List

AGENCY: Postal Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Commission is announcing an update to the competitive product list. This action reflects a publication policy adopted by Commission rules. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The competitive product list, which is re-published in its entirety, includes these updates.

DATES: This rule is effective December 27, 2021, without further action, unless adverse comment is received by December 10, 2021. If adverse comment is received, the Commission will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: For additional information, this document can be accessed electronically through the Commission's website at *https://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6800.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Commission Process
III. Authorization
IV. Modifications
V. Ordering Paragraphs

I. Introduction

Pursuant to 39 U.S.C. 3642(d)(2) and 39 CFR 3040.103, the Commission provides a Notice of Update to Competitive Product List by listing all necessary modifications to the competitive product list.

II. Commission Process

Pursuant to 39 CFR part 3040, the Commission maintains a Mail Classification Schedule (MCS) that includes rates, fees, and product descriptions for each market dominant and competitive product, as well as product lists that categorize Postal Service products as either market dominant or competitive. *See generally* 39 CFR part 3040. The product lists are published in the Code of Federal Regulations as ''Appendix A to Subpart A of Part 3040—Market Dominant Product List'' and ''Appendix B to Subpart A of Part 3040—Competitive Product List'' pursuant to 39 U.S.C. 3642(d)(2). *See* 39 U.S.C. 3642(d)(2). Both the MCS and its product lists are updated by the Commission on its website on a quarterly basis.[1] In addition, these quarterly updates to the product lists are also published in the **Federal Register** pursuant to 39 CFR 3040.103. *See* 39 CFR 3040.103.

III. Authorization

Pursuant to 39 CFR 3040.103(d)(1), this Notice of Update to Product Lists identifies any modifications made to the market dominant or competitive product list, including product additions, removals, and transfers.[2] Pursuant to 39 CFR 3040.103(d)(2), the modifications identified in this document result from the Commission's most recent MCS update posted on the Commission's website on October 5, 2021, and supersede all previous product lists.[3]

IV. Modifications

The following list of products is being added to ''Appendix B to Subpart A of Part 3040—Competitive Product List'':

1. First-Class Package Service Contract 115
2. First-Class Package Service Contract 116
3. First-Class Package Service Contract 117
4. Parcel Select Contract 47
5. Priority Mail & First-Class Package Service Contract 191
6. Priority Mail & First-Class Package Service Contract 192

[1] *See https://www.prc.gov/mail-classification-schedule* in the Current MCS section.

[2] 39 CFR 3040.103(d)(1). More detailed information (*e.g.,* Docket Nos., Order Nos., effective dates, and extensions) for each market dominant and competitive product can be found in the MCS, including the ''Revision History'' section. *See, e.g.,* file ''MCSRedline03312020.docx,'' available at *https://www.prc.gov/mail-classification-schedule.*

[3] Previous versions of the MCS and its product lists can be found on the Commission's website, available at *https://www.prc.gov/mail-classification-schedule* in the MCS Archives section.

7. Priority Mail & First-Class Package Service Contract 193
8. Priority Mail & First-Class Package Service Contract 194
9. Priority Mail & First-Class Package Service Contract 195
10. Priority Mail & First-Class Package Service Contract 196
11. Priority Mail & First-Class Package Service Contract 197
12. Priority Mail & First-Class Package Service Contract 198
13. Priority Mail & First-Class Package Service Contract 199
14. Priority Mail & First-Class Package Service Contract 200
15. Priority Mail & First-Class Package Service Contract 201
16. Priority Mail Contract 691
17. Priority Mail Contract 692
18. Priority Mail Contract 693
19. Priority Mail Contract 694
20. Priority Mail Contract 695
21. Priority Mail Contract 696
22. Priority Mail Contract 697
23. Priority Mail Contract 698
24. Priority Mail Contract 699
25. Priority Mail Contract 700
26. Priority Mail Contract 701
27. Priority Mail Contract 702
28. Priority Mail Contract 703
29. Priority Mail Contract 704
30. Priority Mail Contract 705
31. Priority Mail Contract 706
32. Priority Mail Contract 707
33. Priority Mail Contract 708
34. Priority Mail Contract 709
35. Priority Mail Contract 710
36. Priority Mail Contract 711
37. Priority Mail Contract 712
38. Priority Mail Contract 713
39. Priority Mail Contract 714
40. Priority Mail Contract 715
41. Priority Mail Contract 716
42. Priority Mail Contract 717
43. Priority Mail Contract 718
44. Priority Mail Contract 719
45. Priority Mail Contract 720
46. Priority Mail Express Contract 87
47. Priority Mail Express Contract 88
48. Priority Mail Express Contract 89
49. Priority Mail Express Contract 90
50. Priority Mail Express, Priority Mail & First-Class Package Service Contract 74
51. Priority Mail Express, Priority Mail & First-Class Package Service Contract 75
52. Priority Mail Express, Priority Mail & First-Class Package Service Contract 76
53. Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 9
54. Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 10

The following list of products is being removed from ''Appendix B to Subpart A of Part 3040—Competitive Product List'':

1. First-Class Package Service Contract 75
2. First-Class Package Service Contract 85
3. First-Class Package Service Contract 92
4. First-Class Package Service Contract 93
5. First-Class Package Service Contract 102
6. First-Class Package Service Contract 111
7. First-Class Package Service Contract 113
8. International Priority Airmail Contract 1
9. International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 3
10. International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International, & First-Class Package International Service Contract 7
11. International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 10
12. Parcel Return Service Contract 15
13. Parcel Select & Parcel Return Service Contract 8
14. Parcel Select & Parcel Return Service Contract 12
15. Parcel Select Contract 20
16. Parcel Select Contract 36
17. Priority Mail & First-Class Package Service Contract 61
18. Priority Mail & First-Class Package Service Contract 72
19. Priority Mail & First-Class Package Service Contract 73
20. Priority Mail & First-Class Package Service Contract 74
21. Priority Mail & First-Class Package Service Contract 80
22. Priority Mail & First-Class Package Service Contract 81
23. Priority Mail & First-Class Package Service Contract 85
24. Priority Mail & First-Class Package Service Contract 92
25. Priority Mail & First-Class Package Service Contract 93
26. Priority Mail & First-Class Package Service Contract 103
27. Priority Mail & First-Class Package Service Contract 111
28. Priority Mail & First-Class Package Service Contract 119
29. Priority Mail & First-Class Package Service Contract 120
30. Priority Mail & First-Class Package Service Contract 125
31. Priority Mail & First-Class Package Service Contract 131
32. Priority Mail & First-Class Package Service Contract 138
33. Priority Mail & First-Class Package Service Contract 140
34. Priority Mail & First-Class Package Service Contract 145
35. Priority Mail & First-Class Package Service Contract 147
36. Priority Mail & First-Class Package Service Contract 157
37. Priority Mail & First-Class Package Service Contract 160
38. Priority Mail & First-Class Package Service Contract 161
39. Priority Mail & First-Class Package Service Contract 165
40. Priority Mail & First-Class Package Service Contract 167
41. Priority Mail & First-Class Package Service Contract 171
42. Priority Mail & First-Class Package Service Contract 173
43. Priority Mail & First-Class Package Service Contract 181
44. Priority Mail & Parcel Select Contract 3
45. Priority Mail Contract 357
46. Priority Mail Contract 383
47. Priority Mail Contract 389
48. Priority Mail Contract 395
49. Priority Mail Contract 400
50. Priority Mail Contract 401
51. Priority Mail Contract 403
52. Priority Mail Contract 416
53. Priority Mail Contract 421
54. Priority Mail Contract 424
55. Priority Mail Contract 427
56. Priority Mail Contract 428
57. Priority Mail Contract 431
58. Priority Mail Contract 437
59. Priority Mail Contract 439
60. Priority Mail Contract 440
61. Priority Mail Contract 444
62. Priority Mail Contract 445
63. Priority Mail Contract 450
64. Priority Mail Contract 451
65. Priority Mail Contract 458
66. Priority Mail Contract 462
67. Priority Mail Contract 464
68. Priority Mail Contract 465
69. Priority Mail Contract 502
70. Priority Mail Contract 510
71. Priority Mail Contract 521
72. Priority Mail Contract 522
73. Priority Mail Contract 525
74. Priority Mail Contract 526
75. Priority Mail Contract 532
76. Priority Mail Contract 538
77. Priority Mail Contract 560
78. Priority Mail Contract 563
79. Priority Mail Contract 570
80. Priority Mail Contract 572
81. Priority Mail Contract 574
82. Priority Mail Contract 592
83. Priority Mail Contract 593
84. Priority Mail Contract 597
85. Priority Mail Contract 598

86. Priority Mail Contract 600
87. Priority Mail Contract 602
88. Priority Mail Contract 603
89. Priority Mail Contract 613
90. Priority Mail Contract 616
91. Priority Mail Contract 617
92. Priority Mail Contract 619
93. Priority Mail Contract 622
94. Priority Mail Contract 623
95. Priority Mail Contract 626
96. Priority Mail Contract 629
97. Priority Mail Contract 632
98. Priority Mail Contract 633
99. Priority Mail Contract 637
100. Priority Mail Contract 638
101. Priority Mail Contract 639
102. Priority Mail Contract 643
103. Priority Mail Contract 644
104. Priority Mail Contract 646
105. Priority Mail Contract 648
106. Priority Mail Contract 649
107. Priority Mail Contract 651
108. Priority Mail Contract 652
109. Priority Mail Contract 653
110. Priority Mail Contract 654
111. Priority Mail Contract 659
112. Priority Mail Contract 662
113. Priority Mail Contract 667
114. Priority Mail Contract 668
115. Priority Mail Contract 673
116. Priority Mail Contract 676
117. Priority Mail Contract 678
118. Priority Mail Contract 679
119. Priority Mail Contract 680
120. Priority Mail Express & First-Class Package Service Contract 1
121. Priority Mail Express & First-Class Package Service Contract 3
122. Priority Mail Express & Priority Mail Contract 13
123. Priority Mail Express & Priority Mail Contract 59
124. Priority Mail Express & Priority Mail Contract 62
125. Priority Mail Express & Priority Mail Contract 67
126. Priority Mail Express & Priority Mail Contract 75
127. Priority Mail Express & Priority Mail Contract 79
128. Priority Mail Express & Priority Mail Contract 83
129. Priority Mail Express & Priority Mail Contract 86
130. Priority Mail Express & Priority Mail Contract 105
131. Priority Mail Express & Priority Mail Contract 107
132. Priority Mail Express & Priority Mail Contract 108
133. Priority Mail Express & Priority Mail Contract 112
134. Priority Mail Express & Priority Mail Contract 113
135. Priority Mail Express & Priority Mail Contract 117
136. Priority Mail Express Contract 54
137. Priority Mail Express Contract 57
138. Priority Mail Express Contract 62
139. Priority Mail Express Contract 64
140. Priority Mail Express Contract 82
141. Priority Mail Express Contract 84
142. Priority Mail Express Contract 85
143. Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 3
144. Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 9
145. Priority Mail Express, Priority Mail & First-Class Package Service Contract 23
146. Priority Mail Express, Priority Mail & First-Class Package Service Contract 25
147. Priority Mail Express, Priority Mail & First-Class Package Service Contract 28
148. Priority Mail Express, Priority Mail & First-Class Package Service Contract 29
149. Priority Mail Express, Priority Mail & First-Class Package Service Contract 35
150. Priority Mail Express, Priority Mail & First-Class Package Service Contract 36
151. Priority Mail Express, Priority Mail & First-Class Package Service Contract 37
152. Priority Mail Express, Priority Mail & First-Class Package Service Contract 39
153. Priority Mail Express, Priority Mail & First-Class Package Service Contract 44
154. Priority Mail Express, Priority Mail & First-Class Package Service Contract 45
155. Priority Mail Express, Priority Mail & First-Class Package Service Contract 46
156. Priority Mail Express, Priority Mail & First-Class Package Service Contract 48
157. Priority Mail Express, Priority Mail & First-Class Package Service Contract 68
158. Priority Mail Express, Priority Mail & First-Class Package Service Contract 70
159. Priority Mail Express, Priority Mail & First-Class Package Service Contract 72

The above-referenced changes to the competitive product list are incorporated into ''Appendix B to Subpart A of Part 3040—Competitive Product List.''

V. Ordering Paragraphs

It is ordered:

1. Part 3040 of title 39, Code of Federal Regulations, is amended as set forth below the signature of this document, effective 45 days after the date of publication of the document in the **Federal Register** without further action, unless adverse comments are received.

2. The Secretary shall arrange for publication of the document in the **Federal Register**.

3. Interested persons may submit adverse comments no later than 30 days from the date of the publication of this document in the **Federal Register**.

4. If adverse comments are received, the Secretary will publish a timely withdrawal of the document in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

List of Subjects in 39 CFR Part 3040

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3040—PRODUCT LISTS AND THE MAIL CLASSIFICATION SCHEDULE

■ 1. The authority citation for part 3040 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise appendix A to subpart A of part 3040 to read as follows:

Appendix A to Subpart A of Part 3040—Market Dominant Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

FIRST-CLASS MAIL *

Single-Piece Letters/Postcards
Presorted Letters/Postcards
Flats
Outbound Single-Piece First-Class Mail International
Inbound Letter Post

USPS MARKETING MAIL (COMMERCIAL AND NONPROFIT) *

High Density and Saturation Letters
High Density and Saturation Flats/Parcels
Carrier Route
Letters
Flats
Parcels
Every Door Direct Mail—Retail

PERIODICALS *

In-County Periodicals
Outside County Periodicals

PACKAGE SERVICES *

Alaska Bypass Service
Bound Printed Matter Flats
Bound Printed Matter Parcels
Media Mail/Library Mail

SPECIAL SERVICES *

Ancillary Services
International Ancillary Services
Address Management Services
Caller Service
Credit Card Authentication
International Reply Coupon Service
International Business Reply Mail Service
Money Orders
Post Office Box Service
Stamp Fulfillment Services

NEGOTIATED SERVICE AGREEMENTS *

Domestic*
International*
Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators

NONPOSTAL SERVICES *

Alliances with the Private Sector to Defray Cost of Key Postal Functions
Philatelic Sales

MARKET TESTS *

Plus One
Commercial PO Box Redirect Service
Extended Mail Forwarding

■ 3. Revise appendix B to subpart A of part 3040 to read as follows:

Appendix B to Subpart A of Part 3040—Competitive Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

DOMESTIC PRODUCTS *

Priority Mail Express
Priority Mail
Parcel Select
Parcel Return Service
First-Class Package Service
USPS Retail Ground

INTERNATIONAL PRODUCTS *

Outbound International Expedited Services
Inbound Parcel Post (at UPU rates)
Outbound Priority Mail International
International Priority Airmail (IPA)
International Surface Air Lift (ISAL)
International Direct Sacks—M-Bags
Outbound Single-Piece First-Class Package International Service
Inbound Letter Post Small Packets and Bulky Letters

NEGOTIATED SERVICE AGREEMENTS *

Domestic *
Priority Mail Express Contract 60
Priority Mail Express Contract 65
Priority Mail Express Contract 74
Priority Mail Express Contract 77
Priority Mail Express Contract 81
Priority Mail Express Contract 83
Priority Mail Express Contract 87
Priority Mail Express Contract 88
Priority Mail Express Contract 89
Priority Mail Express Contract 90
Parcel Return Service Contract 11
Parcel Return Service Contract 14
Parcel Return Service Contract 17
Parcel Return Service Contract 18
Priority Mail Contract 80
Priority Mail Contract 153
Priority Mail Contract 292
Priority Mail Contract 360
Priority Mail Contract 438
Priority Mail Contract 457
Priority Mail Contract 469
Priority Mail Contract 474
Priority Mail Contract 478
Priority Mail Contract 479
Priority Mail Contract 486
Priority Mail Contract 487
Priority Mail Contract 488
Priority Mail Contract 490
Priority Mail Contract 495
Priority Mail Contract 497
Priority Mail Contract 499
Priority Mail Contract 503
Priority Mail Contract 504
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Priority Mail Contract 509
Priority Mail Contract 511
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Priority Mail Contract 589
Priority Mail Contract 590
Priority Mail Contract 591
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Priority Mail Contract 596
Priority Mail Contract 601
Priority Mail Contract 604
Priority Mail Contract 605
Priority Mail Contract 607
Priority Mail Contract 609
Priority Mail Contract 611
Priority Mail Contract 614
Priority Mail Contract 615
Priority Mail Contract 618
Priority Mail Contract 628
Priority Mail Contract 631
Priority Mail Contract 635
Priority Mail Contract 640
Priority Mail Contract 641
Priority Mail Contract 642
Priority Mail Contract 645
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Priority Mail Contract 712
Priority Mail Contract 713
Priority Mail Contract 714
Priority Mail Contract 715
Priority Mail Contract 716
Priority Mail Contract 717
Priority Mail Contract 718
Priority Mail Contract 719
Priority Mail Contract 720
Priority Mail Express & Priority Mail Contract 48
Priority Mail Express & Priority Mail Contract 72
Priority Mail Express & Priority Mail Contract 73
Priority Mail Express & Priority Mail Contract 84
Priority Mail Express & Priority Mail Contract 85
Priority Mail Express & Priority Mail Contract 88
Priority Mail Express & Priority Mail Contract 89
Priority Mail Express & Priority Mail Contract 90
Priority Mail Express & Priority Mail Contract 92
Priority Mail Express & Priority Mail Contract 95
Priority Mail Express & Priority Mail Contract 96
Priority Mail Express & Priority Mail Contract 99
Priority Mail Express & Priority Mail Contract 101
Priority Mail Express & Priority Mail Contract 102
Priority Mail Express & Priority Mail Contract 103
Priority Mail Express & Priority Mail Contract 111
Priority Mail Express & Priority Mail Contract 114
Priority Mail Express & Priority Mail Contract 116

Priority Mail Express & Priority Mail Contract 118
Priority Mail Express & Priority Mail Contract 119
Priority Mail Express & Priority Mail Contract 120
Priority Mail Express & Priority Mail Contract 121
Priority Mail Express & Priority Mail Contract 122
Priority Mail Express & Priority Mail Contract 123
Priority Mail Express & Priority Mail Contract 124
Priority Mail Express & Priority Mail Contract 125
Parcel Select & Parcel Return Service Contract 7
Parcel Select & Parcel Return Service Contract 9
Parcel Select & Parcel Return Service Contract 10
Parcel Select & Parcel Return Service Contract 11
Parcel Select & Parcel Return Service Contract 13
Parcel Select Contract 34
Parcel Select Contract 35
Parcel Select Contract 37
Parcel Select Contract 38
Parcel Select Contract 39
Parcel Select Contract 40
Parcel Select Contract 41
Parcel Select Contract 42
Parcel Select Contract 43
Parcel Select Contract 44
Parcel Select Contract 45
Parcel Select Contract 46
Parcel Select Contract 47
Priority Mail—Non-Published Rates 1
Priority Mail—Non-Published Rates 2
First-Class Package Service Contract 87
First-Class Package Service Contract 94
First-Class Package Service Contract 99
First-Class Package Service Contract 100
First-Class Package Service Contract 103
First-Class Package Service Contract 104
First-Class Package Service Contract 106
First-Class Package Service Contract 107
First-Class Package Service Contract 108
First-Class Package Service Contract 109
First-Class Package Service Contract 110
First-Class Package Service Contract 112
First-Class Package Service Contract 114
First-Class Package Service Contract 115
First-Class Package Service Contract 116
First-Class Package Service Contract 117
Priority Mail Express, Priority Mail & First-Class Package Service Contract 38
Priority Mail Express, Priority Mail & First-Class Package Service Contract 40
Priority Mail Express, Priority Mail & First-Class Package Service Contract 43
Priority Mail Express, Priority Mail & First-Class Package Service Contract 47
Priority Mail Express, Priority Mail & First-Class Package Service Contract 51
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Priority Mail Express, Priority Mail & First-Class Package Service Contract 53
Priority Mail Express, Priority Mail & First-Class Package Service Contract 55
Priority Mail Express, Priority Mail & First-Class Package Service Contract 57
Priority Mail Express, Priority Mail & First-Class Package Service Contract 58
Priority Mail Express, Priority Mail & First-Class Package Service Contract 62
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Priority Mail Express, Priority Mail & First-Class Package Service Contract 76
Priority Mail & First-Class Package Service Contract 9
Priority Mail & First-Class Package Service Contract 26
Priority Mail & First-Class Package Service Contract 79
Priority Mail & First-Class Package Service Contract 83
Priority Mail & First-Class Package Service Contract 88
Priority Mail & First-Class Package Service Contract 94
Priority Mail & First-Class Package Service Contract 95
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Priority Mail & First-Class Package Service Contract 148
Priority Mail & First-Class Package Service Contract 150
Priority Mail & First-Class Package Service Contract 152
Priority Mail & First-Class Package Service Contract 153
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Priority Mail & First-Class Package Service Contract 155
Priority Mail & First-Class Package Service Contract 156
Priority Mail & First-Class Package Service Contract 163
Priority Mail & First-Class Package Service Contract 166
Priority Mail & First-Class Package Service Contract 169
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Priority Mail & First-Class Package Service Contract 172
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Priority Mail & First-Class Package Service Contract 198
Priority Mail & First-Class Package Service Contract 199
Priority Mail & First-Class Package Service Contract 200
Priority Mail & First-Class Package Service Contract 201
Priority Mail & Parcel Select Contract 4
Priority Mail & Parcel Select Contract 5
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 1
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 2
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 3
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 5
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 6
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 7
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 8
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 9
Priority Mail, First-Class Package Service & Parcel Select Contract 1
Priority Mail, First-Class Package Service & Parcel Select Contract 2
Outbound International*
Global Expedited Package Services (GEPS) Contracts
  GEPS 3
  GEPS 5
  GEPS 6
  GEPS 7
  GEPS 8
  GEPS 9
  GEPS 10
Global Bulk Economy (GBE) Contracts
Global Plus Contracts
  Global Plus 1C
  Global Plus 1D
  Global Plus 1E
  Global Plus 2C
  Global Plus 3
  Global Plus 4
  Global Plus 5
  Global Plus 6
Global Reseller Expedited Package Contracts
  Global Reseller Expedited Package Services 1
  Global Reseller Expedited Package Services 2
  Global Reseller Expedited Package Services 3
  Global Reseller Expedited Package Services 4
Global Expedited Package Services (GEPS)—Non-Published Rates
  Global Expedited Package Services (GEPS)—Non-Published Rates 2
  Global Expedited Package Services (GEPS)—Non-Published Rates 3
  Global Expedited Package Services (GEPS)—Non-Published Rates 4
  Global Expedited Package Services (GEPS)—Non-Published Rates 5
  Global Expedited Package Services (GEPS)—Non-Published Rates 6
  Global Expedited Package Services (GEPS)—Non-Published Rates 7
  Global Expedited Package Services (GEPS)—Non-Published Rates 8
  Global Expedited Package Services (GEPS)—Non-Published Rates 9
  Global Expedited Package Services (GEPS)—Non-Published Rates 10
  Global Expedited Package Services (GEPS)—Non-Published Rates 11
  Global Expedited Package Services (GEPS)—Non-Published Rates 12
  Global Expedited Package Services (GEPS)—Non-Published Rates 13
  Global Expedited Package Services (GEPS)—Non-Published Rates 14
  Global Expedited Package Services (GEPS)—Non-Published Rates 15
Priority Mail International Regional Rate Boxes—Non-Published Rates
Outbound Competitive International Merchandise Return Service Agreement with Royal Mail Group, Ltd.
Priority Mail International Regional Rate Boxes Contracts
  Priority Mail International Regional Rate Boxes Contracts 1
Competitive International Merchandise Return Service Agreements with Foreign Postal Operators
  Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 1
  Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2
Alternative Delivery Provider (ADP) Contracts
  ADP 1
Alternative Delivery Provider Reseller (ADPR) Contracts
  ADPR 1
Priority Mail Express International, Priority Mail International & First-Class Package International Service Contracts
Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contracts
  Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 2
  Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 4
  Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 5
  Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 6
  Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 7
  Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 8
  Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 10
Priority Mail Express International, Priority Mail International & Commercial ePacket Contracts
International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contracts
  International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1
  International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 2
  International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 4
  International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 5
  International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 6
  International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 8
  International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 9
International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contracts
  International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 1
  International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 2
  International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 3
  International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 4
  International Priority Airmail, Commercial ePacket, Priority Mail Express

International, Priority Mail International & First-Class Package International Service with Reseller Contract 5
International Priority Airmail Contracts
International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contracts
International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1
International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 2
International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contracts
International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 1
International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 2
Inbound International*
International Business Reply Service (IBRS) Competitive Contracts
International Business Reply Service Competitive Contract 1
International Business Reply Service Competitive Contract 3
Inbound Direct Entry Contracts with Customers
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations 1
Inbound EMS
Inbound EMS 2
Inbound Air Parcel Post (at non-UPU rates)
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

SPECIAL SERVICES*

Address Enhancement Services
Greeting Cards, Gift Cards, and Stationery
International Ancillary Services
International Money Transfer Service—Outbound
International Money Transfer Service—Inbound
Premium Forwarding Service
Shipping and Mailing Supplies
Post Office Box Service
Competitive Ancillary Services

NONPOSTAL SERVICES*

Advertising
Licensing of Intellectual Property other than Officially Licensed Retail Products (OLRP)
Mail Service Promotion
Officially Licensed Retail Products (OLRP)
Passport Photo Service
Photocopying Service
Rental, Leasing, Licensing or other Non-Sale Disposition of Tangible Property
Training Facilities and Related Services
USPS Electronic Postmark (EPM) Program

MARKET TESTS*

[FR Doc. 2021–24391 Filed 11–9–21; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 160906822–7547–02; RTID 0648–XB566]

Snapper-Grouper Fishery of the South Atlantic; 2021 Commercial Accountability Measure and Closure of the Georgia, South Carolina, and North Carolina Hogfish Stock in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) applicable to the commercial harvest of hogfish in the South Atlantic exclusive economic zone (EEZ) off Georgia, South Carolina, and North Carolina (Georgia-North Carolina) for the 2021 fishing year through this temporary rule. NMFS estimates that commercial landings of the Georgia-North Carolina hogfish stock have reached the sector's annual catch limit (ACL). Therefore, NMFS closes the commercial sector for the Georgia-North Carolina hogfish stock on November 10, 2021. This closure is necessary to protect the hogfish resource.

DATES: This rule is effective 12:01 a.m., local time, November 10, 2021, until 12:01 a.m., local time, January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *mary.vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes hogfish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On August 24, 2017, NMFS implemented management measures for hogfish through a final rule for Amendment 37 to the FMP (82 FR 34584; July 25, 2017). For South Atlantic hogfish, that final rule set management and AMs as two stocks: Georgia, South Carolina, and North Carolina (Georgia-North Carolina), and Florida Keys/East Florida (Florida Keys-East Florida). It also specified fishing levels and AMs for those stocks, according to each sector. The commercial inseason AM for Georgia-North Carolina states that if commercial landings reach or are projected to reach the commercial ACL, then the commercial sector will be closed for the remainder of the fishing year (50 CFR 622.193(u)(1)(i)(A)).

The commercial ACL for the Georgia-North Carolina hogfish stock is 23,456 lb (10,639 kg), round weight (50 CFR 622.193(u)(1)(iii)(A)). The NMFS Southeast Fisheries Science Center indicates that the commercial ACL for the Georgia-North Carolina hogfish stock has been reached. Therefore, this temporary rule implements an AM to close the commercial sector of the Georgia-North Carolina hogfish stock for the remainder of the 2021 fishing year. As a result, the 2021 commercial harvest for the Georgia-North Carolina hogfish stock in Federal waters of the South Atlantic EEZ will be closed effective 12:01 a.m., local time, November 10, 2021. During the closure, the recreational bag and possession limits for the Georgia-North Carolina hogfish stock in or from South Atlantic Federal waters is two fish per person, per day.

All sale or purchase of hogfish in or from Federal waters of the South Atlantic off Georgia, South Carolina, and North Carolina is prohibited, and harvest or possession of this species is limited to the bag and possession limits while the recreational sector is open. These bag and possession limits apply to the Georgia-North Carolina hogfish stock on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters (50 CFR 622.193(u)(1)(i)(A)).

Commercial harvest for the 2022 fishing year for the Georgia-North Carolina hogfish stock in South Atlantic Federal waters will open at 12:01 a.m., local time, on January 1, 2022.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 50 CFR 622.193(u)(1)(i)(A), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the NMFS Assistant Administrator (AA) finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule that established the commercial ACL and AMs for hogfish has already been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect the Georgia-North Carolina hogfish stock. The commercial ACL for the Georgia-North Carolina hogfish stock in the South Atlantic has been reached and prior notice and opportunity for public comment would require time, resulting in a harvest well in excess of the established commercial ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 5, 2021.

Ngagne Jafnar Gueye,

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

[FR Doc. 2021–24605 Filed 11–5–21; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 211104–0225]

RIN 0648–BK96

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Removal of Prohibitions for Gillnet Gear in Nantucket Lightship and Closed Area I

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

ACTION: Final rule.

SUMMARY: This action reopens gillnet fishing in the Nantucket Lightship and Closed Area I Closure Areas previously ordered suspended by a Court decision. Gillnet fishing will be allowed in the Nantucket Lightship and Closed Area I Groundfish Closure Areas, as approved in the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2. This action is necessary to end the suspension of measures from a previously approved and implemented Council action and remove temporary prohibitions that were in place to comply with a Federal court order.

DATES: Effective on November 10, 2021.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Senior Fishery Program Specialist, Greater Atlantic Regional Fisheries Office, 978–281–9218 *Moira.Kelly@noaa.gov.*

SUPPLEMENTARY INFORMATION: On January 3, 2018, NMFS partially approved the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment 2. The Omnibus Amendment updated essential fish habitat designations for all Council-managed species and implemented changes to the spatial management of Council-managed fisheries throughout the Gulf of Maine, Georges Bank, and Southern New England. On April 9, 2018, a final rule implemented the approved measures (83 FR 15240). The final rule opened, modified, and maintained various previously closed areas, as well as established new closures to implement approved measures of the Amendment. The Nantucket Lightship and Closed Area I Groundfish Closure Areas were opened to fishing by gears capable of catching groundfish, including gillnets and bottom-trawls, throughout the areas in this final rule. (Note, scallop fishing was prohibited for a brief time, pending a follow-on scallop action that incorporated the newly opened areas into the Scallop Fishery Management Plan's rotational management program. See: 83 FR 17300; April 19, 2018.) Directed groundfish fishing had been prohibited in these general areas consistently since the 1980s and early 1990s.

The Conservation Law Foundation filed suit against NMFS arguing that the rulemaking process that allowed the opening of the Nantucket Lightship and Closed Area I Groundfish Closure Areas to gears capable of catching groundfish, including gillnet gear, was not done in compliance with the Endangered Species Act consultation requirements as it pertains to North Atlantic right whales.

On October 28, 2019, First District Court Judge James E. Boasberg (see *Conservation Law Found.* v. *Ross, No. CV 18–1087 (JEB), 2019 WL 5549814 (D.D.C. Oct. 28, 2019)*) agreed with the Conservation Law Foundation and enjoined NMFS from allowing gillnet fishing in those previously closed areas, until such time that NMFS fully complied with the requirements of the Endangered Species Act and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). We implemented that suspension through a final rule on December 17, 2019 (84 FR 68798).

Reopening Closure Areas to Gillnet Fishing

Recently, NMFS completed the Endangered Species Act Section 7 Consultation on 10 fisheries and the New England Fishery Management Council's Omnibus Essential Fish Habitat Amendment. The consultation concluded that the implementation of the approved portions of the Amendment, including removing the prohibition on gillnet fishing in the Nantucket Lightship and Closed Area I Groundfish Closure Areas, would not result in large shifts of fishing effort across or within the region. As a result, these shifts are not expected to increase the risk to protected species in the region. The completion of this consultation satisfied the requirements of the court order.

Therefore, this action re-opens the Nantucket Lightship and Closed Area I Closure Area to gillnet fishing, as approved in the Omnibus Habitat Amendment.

On-Going Issues Related to Gillnet Fishing and North Atlantic Right Whales

The Atlantic Large Whale Take Reduction Team is considering broader impacts of gillnet fishing on North Atlantic right whales. These considerations may include area-based closures (seasonal or year-round) or other measures that may restrict gillnet fishing in the areas of the Nantucket Lightship and Groundfish Closure Areas in the future. Interested parties should continue to follow the Take Reduction Team process and provide comments, concerns, and suggestions as described. More information is available on our website (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/marine-mammal-protection/atlantic-large-whale-take-reduction-plan*).

Classification

Pursuant to section 304(a) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the regulations as implemented in this final rule are necessary to discharge the Secretary's responsibilities under the Magnuson-Stevens Act and to comply with the Order issued from the First District Court on October 28, 2019.

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

The NMFS Assistant Administrator finds good cause that prior notice and an opportunity for public comment is unnecessary or contrary to public interest pursuant to 5 U.S.C. 553(b)(B). Notice and opportunity for public comment prior to reopening the Nantucket Lightship and Closed Area 1 Groundfish Closure Areas to gillnet fishing is contrary to public interest because the Omnibus Habitat Amendment and its suspended measures fully comply with the Endangered Species Act and Magnuson-Stevens Act, and the prohibitions against fishing with gillnets are no longer necessary to comply with the Court's order enjoining fishing with gillnets in the Nantucket Lightship and Closed Area I Groundfish Closure Areas. Because the Amendment is now in full compliance with the Endangered Species Act and Magnuson-Stevens Act, the Secretary has no basis on which to keep the areas closed or modify the gillnet provisions that the Secretary approved in the Amendment. Further delaying reopening the areas for public comment would be inconsistent with the Secretary's responsibility to carry out fishery management amendments the Secretary has approved and are in full compliance with all applicable laws.

Additional opportunity for public comment on the open areas is unnecessary because notice and opportunity for comment on the Omnibus Habitat Amendment measures and its implementing regulations were provided already. The development of the Omnibus Habitat Amendment was a public process led by the New England Fishery Management Council, during which there were over 200 public meetings. The public had an opportunity to comment on the Amendment's measures and regulations involved in this action when they were implemented through publication in the **Federal Register** of the proposed and final rules for the Omnibus Habitat Amendment. An additional opportunity for comments on the suspended measures would be unnecessarily duplicative. Therefore, it is unnecessary and contrary to the public interest to delay this action for prior notice and the opportunity for public comment.

For the same reasons as above and additional reasons stated below, pursuant to 5 U.S.C. 553(d)(3), the NMFS Assistant Administrator finds good cause for these provisions to be effective immediately upon publication of this final rule. A delay in implementation is unnecessary because affected members of the public do not need time to prepare and the rule relieves a restriction implemented by the Court. The suspended measures were implemented on April 9, 2018. From that day until December 17, 2019, approximately 11 gillnet vessels took 39 trips into these areas. These vessel owners and operators along with others are familiar with the suspended measures. Access to these areas once these measures are restored and the prohibitions removed in this action is expected to provide an economic benefit to gillnet vessels fishing in these areas. Delaying the effective date for reopening these areas will unnecessarily delay and reduce this economic benefit to these vessels that could be gained during this fishing year.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 4, 2021.

Carrie Robinson,

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

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

§ 648.81 [Amended]

■ 2. In § 648.81, remove paragraph (a)(6).

[FR Doc. 2021–24510 Filed 11–9–21; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 215
Wednesday, November 10, 2021

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 THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2021–0009; Notice No. 206]

RIN 1513–AC72

Proposed Establishment of the Gabilan Mountains Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the approximately 98,000-acre ''Gabilan Mountains'' viticultural area in Monterey and San Benito Counties, California. The proposed viticultural area lies entirely within the established Central Coast viticultural area and would entirely encompass the established Mt. Harlan and Chalone viticultural areas. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: TTB must receive comments on or before January 10, 2022.

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB–2021–0009 as posted on *Regulations.gov* (*https://www.regulations.gov*), the Federal e-rulemaking portal. Please see the ''Public Participation'' section of this document below for full details on how to comment on this proposal via *Regulations.gov* or U.S. mail, and for full details on how to obtain copies of this document, its supporting materials, and any comments related to this proposal.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated the functions and duties in the administration and enforcement of these provisions to the TTB Administrator through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003).

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes the standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- If the proposed AVA is to be established within, or overlapping, an existing AVA, an explanation that both identifies the attributes of the proposed AVA that are consistent with the existing AVA and explains how the proposed AVA is sufficiently distinct from the existing AVA and therefore appropriate for separate recognition;
- If the petition proposes the establishment of a new AVA that is larger than, and encompasses, all of one or more existing AVAs, the evidence submitted under paragraph (a) of § 9.12 must include information addressing whether, and to what extent, the attributes of the proposed AVA are consistent with those of the existing AVA(s);
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Gabilan Mountains Petition

TTB received a petition from Parker Allen of Coastview Vineyards, proposing the establishment of the ''Gabilan Mountains'' AVA. The proposed Gabilan Mountains AVA is located within Monterey and San Benito Counties, California, and lies entirely within the established Central Coast AVA (27 CFR 9.75). The proposed AVA also entirely encompasses the established Mt. Harlan (27 CFR 9.131) and Chalone (27 CFR 9.24) AVAs. The proposed Gabilan Mountains AVA contains approximately 98,000 acres and has 6 commercially-producing vineyards covering a total of approximately 436 acres, as well as 4 wineries.

According to the petition, the distinguishing features of the proposed Gabilan Mountains AVA include its elevation, climate, and soils. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this document are from the petition for the proposed Gabilan Mountains AVA and its supporting exhibits.

Name Evidence

The proposed Gabilan Mountains AVA takes its name from the Gabilan Mountains range in which the proposed AVA is located. According to the petition, the name is derived from the Spanish word meaning ''sparrow hawk,'' a reference to the large number of red-tailed hawks that can be found in the region.[1] The petition notes that the word ''Gabilan'' is sometimes written as ''Gavilan,'' as shown on a 1904 Decision Card from the U.S. Board of Geographic Names.[2] However, the petitioner chose the spelling ''Gabilan,'' as that is the spelling found on current USGS maps and in the current USGS Geographic Names Information System. [3]

The petition notes that the region of the proposed AVA is the setting for John Steinbeck's book *East of Eden.* Steinbeck wrote that ''the Gabilan Mountains to the east of the valley were light gay mountains full of sun and loveliness * * *,'' whereas the Santa Lucia Mountains to the west were ''dark and brooding–unfriendly and dangerous.'' The name has recently been used to describe the proposed AVA region in a real estate listing for a lot consisting of ''approximately 165 acres in the Gabilan Mountains.'' [4] A website for planning hiking holidays includes an entry for the ''Trails of the Gabilan Mountains.'' [5] The California State Parks website includes an entry for San Juan Bautista State Park, which includes the home of the military commander of an 1846 battle at Fremont Peak, which took place ''in the nearby Gabilan Mountains.'' [6] The petition notes that Fremont Peak is located within the proposed AVA. Finally, the petition states that a species of salamander found only within the proposed AVA and a few other nearby areas is known as the Gabilan Mountains Slender Salamander.[7]

Boundary Evidence

The proposed Gabilan Mountains AVA is comprised primarily of elevations above 1,500 feet. The northern boundary follows the 1,520-foot elevation contour and separates the proposed AVA from the lower elevations of the San Juan and Hollister Valleys, as well as from the Hollister Hills State Vehicular Recreational Area, which is not available for commercial viticulture. The eastern boundary follows a combination of the 1,520-foot elevation contour and the 1,600-foot elevation contour to separate the proposed AVA from the lower elevations of the adjacent, established San Benito (27 CFR 9.110) and Cienega Valley (27 CFR 9.38) AVAs. The southern boundary follows the boundary of the Pinnacles National Park boundary, to exclude that region of Federally-owned land that is not available for commercial viticulture. The western boundary generally follows the 1,520-foot elevation contour to separate the proposed AVA from the lower elevations of the Salinas Valley.

Distinguishing Features

The distinguishing features of the proposed Gabilan Mountains AVA are its elevation, climate, and soils.

Elevation

The proposed Gabilan Mountains AVA is located in a mountainous region with high elevations. According to the petition, the average elevation within the proposed AVA is 2,370 feet. By contrast, the surrounding regions all have lower average elevations, as demonstrated in the following table.

TABLE 1—AVERAGE ELEVATIONS

AVA (direction from proposed AVA)	Average elevation (in feet)
Proposed Gabilan Mountains	2,370
Santa Clara Valley (north) [8]	345
Lime Kiln Valley (east) [9]	880
Cienega Valley (east) [10]	1,105
Paicines (east) [11]	778
San Benito (east) [12]	881
Arroyo Seco (south) [13]	331
Monterey (west) [14]	480
Santa Lucia Highlands (west) [15]	512

According to the petition, the proposed AVA's higher elevations place it above the heavy fog and marine layer. As a result, the proposed AVA has a cool air climate without the humidity from the fog and low-lying clouds. The petition claims that the lower humidity levels significantly reduce mildew pressure in the proposed AVA, which allows growers to use less fungicide and pursue more organic practices during the growing season.

Climate

The petition states that the climate of the proposed Gabilan Mountains AVA distinguishes it from the surrounding regions, particularly with respect to fog and rainfall. According to a 2016 study cited in the petition, the proposed AVA averages fewer than 2.5 hours of fog and low clouds per day each year during the months of June through September.[16] By contrast, King City, to the south of the proposed AVA averages 7 hours, while Salinas, to the west, and Hollister, to the north, both average 9 hours. Each of these three locations sits at lower elevations than the proposed AVA and lies within valleys with airflow access to the Pacific Ocean. Paicines, which is to the east of the proposed AVA and sheltered from the marine air by the Hollister Hills, receives an average of only 2 hours of fog and low cloud cover daily.

According to the petition, the lack of fog within the proposed Gabilan Mountains AVA has an effect on viticulture. Vines exposed to humid conditions, such as heavy fog or low cloud cover, have a high degree of

[1] Gudde, Erwin G., and William Bright. *California Place Names: The Origin and Etymology of Current Geographical Names.* Berkeley: University of California, 2010.

[2] *See* Exhibit 1 of the petition in Docket TTB–2021–0009 at *https://www.regulations.gov.*

[3] *See https://www.usgs.gov/core-science-systems/ngp/board-on-geographic-names/domestic-names.*

[4] *https://www.realtor.com/realestateandhomes-detail/Gabilan-Range_Hollister_CA_95023_M2012427678.*

[5] *www.mountainhikingholidays.com/pinnacles-national-park-hiking-tour.*

[6] *www.parks.ca.gov/?page_id=22678.*

[7] *californiaherps.com/salamanders/pages/b.gavilanensis.html.*

[8] 27 CFR 9.126.

[9] 27 CFR 927.

[10] 27 CFR 9.38.

[11] 27 CFR 9.39.

[12] 27 CFR 9.110.

[13] 27 CFR 9.59.

[14] 27 CFR 9.98.

[15] 27 CFR 9.139.

[16] Torregrosa, A., C. Combs, and J. Peters (2016), GOES-derived fog and low cloud indices for coastal north and central California ecological analyses, *Earth and Space Science, 3,* 46–67. *See also* Figure 2 of the petition in Docket TTB–2021–0009.

mildew pressure. Additionally, heavy fog and low clouds act as a blanket, insulating the valley floor and raising the average temperature higher than temperatures in the elevations above the fog line. Finally, vines growing above the fog line have more access to direct sunlight, which provides photosynthesis to the vines for proper maturation.

Annual rainfall amounts within the proposed Gabilan Mountains are higher than in each of the surrounding regions.[17] The proposed AVA receives an average of 17.24 inches of rainfall each year, with over 12 inches of that amount occurring during the late fall and winter months. Summers within the proposed AVA are extremely dry, averaging only 0.15 inch of rainfall annually. To the north of the proposed AVA in Hollister, annual rainfall amounts average 14.19 inches, while Paicines, to the east, receives 16.06 inches. To the south of the proposed AVA, King City receives an average of 12.06 inches of rain each year, and Salinas, to the west, receives an average of 12.83 inches. As within the proposed AVA, most of the rainfall in each of the surrounding regions occurs in the late fall and winter months.

According to the petition, rains during the fall and winter act to clear the soil and send nutrients and carbohydrates to the dormant roots. Extremely dry summers reduce the risk of moisture-associated diseases damaging the fruit and keeps the sugars and acids in balance closer to harvest.

Soils

The soils of the proposed Gabilan Mountains AVA are described in the petition as moderately coarse textured soils over a bedrock of granite. The soils are primarily from the Sheridan-Cieneba-Auberry association and are located on strongly sloping to very steep slope angles. The soils are also described as well-drained to excessively drained. Additionally, the soils are rich in calcium due to the high limestone content.

By contrast, the petition describes the soils in the valleys to the east and west of the proposed AVA as medium-textured soils on floodplains and alluvial plains. The petition included a San Benito County soil associations map, which includes the region to the east of the proposed AVA. The map shows that the soils in the eastern valleys outside of the proposed AVA are primarily of the San Benito-Gazos-Linne association. The petition did not include a soil association map of the valleys to the west of the proposed AVA in Monterey County, so TTB is unable to determine the primary soil association for that region. The petition also did not describe the soils to the north and south of the proposed AVA.

According to the petition, the quick-draining soils of the proposed AVA stress the vines during the growing season, resulting in more intense flavors and rich, hardy skins that are less associated with vines grown in less well-drained soils. Additionally, well-drained soils are at less of a risk for root decay than waterlogged soils. Finally, the high calcium content of the soil causes grapes to carry acid later into the growing season, allowing growers to let the grapes remain on the vines longer so that they reach physiological ripeness. As a result, vineyards in the proposed AVA are typically harvested two to three weeks later than the vineyards in the valleys of the surrounding regions.

Summary of Distinguishing Features

In summary, the elevation, climate, and soils of the proposed Gabilan Mountains AVA distinguish it from the surrounding regions. The following table compares and contrast the features of the proposed AVA to each of the surrounding regions.

TABLE 2—COMPARISON OF PROPOSED AVA TO SURROUNDING REGIONS

Region	Average elevation	Climate	Soils
Proposed AVA	2,370 feet	2.5 hours or less of fog and low cloud cover daily during summer months; 17.24 inches of rainfall annually.	Moderately coarse textured soils over a bedrock of granite; well-drained to excessively drained; calcium-rich; Sheridan-Cieneba-Auberry association.
North	Lower	9 hours of fog and low cloud cover daily during summer months; 14.19 inches of rainfall annually.	Not provided.
East	Lower	2 hours of fog and low cloud cover daily during summer months; 16.06 inches of rainfall annually.	Medium-textured soils on floodplains and alluvial plains; San Benito-Gazos-Linne association.
South	Lower	7 hours of fog and low cloud cover daily during summer months; 12.06 inches of rainfall annually.	Not provided.
West	Lower	9 hours of fog and low cloud cover daily during summer months; 12.83 inches of rainfall annually.	Medium-textured soils on floodplains and alluvial plains.

Comparison of the Proposed Gabilan Mountains AVA to the Existing Central Coast AVA

T.D.–ATF–216, which published in the **Federal Register** on October 24, 1985 (50 FR 43128), established the Central Coast AVA. The AVA is a large, multi-county AVA that entirely encompasses the proposed Gabilan Mountains AVA. T.D. ATF–216 states that the Central Coast AVA is primarily distinguished by its marine-influenced climate. The AVA experiences maximum high temperatures, minimum low temperatures, marine fog incursion, relative humidity, length of growing season, and precipitation that are significantly different from conditions on the eastern (inland) side of the Coastal Ranges.

The proposed Gabilan Mountains AVA shares some of the general viticultural features of the Central Coast AVA. For example, like the Central Coast AVA, the proposed AVA has higher average annual rainfall amounts than the more inland valleys. However, due to its higher elevations, the proposed AVA experiences less marine fog incursion than many of the lower elevation and coastal regions of the Central Coast AVA. Additionally, due to its smaller size, the soils and elevations of the proposed AVA are less varied than those of the Central Coast AVA.

Comparison of the Proposed Gabilan Mountains AVA to the Existing Mt. Harlan AVA

The Mt. Harlan AVA is located in the northern portion of the proposed Gabilan Mountains AVA and was established by T.D. ATF–304, which was published in the **Federal Register** on November 15, 1990 (55 FR 47744). According to T.D. ATF–304, the Mt. Harlan AVA is characterized by

[17] All rainfall amounts derived from the National Climate Data Center's 1981–2010 Climate Normals, which were the most recent normals available.

elevations that are higher than those of the surrounding valleys and a lack of heavy marine fog. Soils within the AVA are high in limestone and are primarily from the Sheridan, Cieneba, and Auberry series.

Like the Mt. Harlan AVA, the proposed Gabilan Mountains AVA is a region of high, mountainous elevations surrounded by lower valleys. The proposed AVA also contains soils from the Sheridan, Cieneba, and Auberry series, and it also experiences less marine fog than most of the surrounding regions. However, due to its larger size, the proposed AVA has a broader range of elevations and a higher average elevation than the Mt. Harlan AVA. Additionally, the proposed AVA as a whole receives less rainfall annually than the Mt. Harlan AVA, due to the Mt. Harlan AVA's closer proximity to the Hollister and Cienega Valleys that funnel storms in from the Pacific Ocean.

Comparison of the Proposed Gabilan Mountains AVA to the Existing Chalone AVA

The Chalone AVA is located in the southern end of the proposed Gabilan Mountains AVA and was established by T.D. ATF–107, which was published in the **Federal Register** on June 14, 1982 (47 FR 25517). The Chalone AVA is located at higher elevations than the Salinas Valley, which is located to the west and south of the AVA, and therefore receives less fog and marine air than the valley. The soils are derived from granite and contain large amounts of limestone.

The proposed Gabilan Mountains AVA shares some of the major characteristics of the Chalone AVA. For example, both the established AVA and the proposed AVA have higher elevations than the surrounding valleys, and both have soils characterized by high limestone content. However, due to its larger size, the proposed Gabilan Mountains AVA has a wider range of elevations and a higher average elevation. Additionally, the proposed AVA as a whole receives more rainfall annually than the Chalone AVA, which is sheltered from the Pacific storms by the Santa Lucia Mountains.

TTB Determination

TTB concludes that the petition to establish the 98,000-acre Gabilan Mountains AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and they are listed below in the proposed regulatory text. You may also view the proposed Gabilan Mountains AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, ''Gabilan Mountains,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name ''Gabilan Mountains'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if this proposed rule is adopted as a final rule.

The approval of the proposed Gabilan Mountain AVA would not affect any existing AVA, and any bottlers using ''Central Coast'', ''Mt. Harlan,'' or ''Chalone'' as an appellation of origin or in a brand name for wines made from grapes grown within those AVAs would not be affected by the establishment of this new AVA. The establishment of the proposed Gabilan Mountains AVA would allow vintners to use ''Gabilan Mountains'' and ''Central Coast'' as appellations of origin for wines made from grapes grown within the proposed Gabilan Mountains AVA if the wines meet the eligibility requirements for the appellation. Vintners whose wines meet the eligibility requirements for the Mt. Harlan AVA appellation would also be able to use ''Gabilan Mountains,'' along with or in place of ''Mt. Harlan'' or ''Central Coast,'' as an appellation of origin. Additionally, vintners whose wines meet the eligibility requirements for the Chalone AVA appellation would be able to use ''Gabilan Mountains,'' along with or in place of ''Chalone'' or ''Central Coast,'' as an appellation of origin.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of the name, boundary, soils, and other required information submitted in support of the petition. In addition, given the proposed Gabilan Mountain AVA's location within the existing Central Coast AVA, TTB is interested in comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed AVA sufficiently differentiates it from the existing established AVA. TTB is also interested in comments on whether the geographic features of the proposed AVA are so distinguishable from the surrounding Central Coast AVA that the proposed Gabilan Mountains AVA should no longer be part of that AVA. Finally, TTB is interested in comments on whether the evidence sufficiently distinguishes the proposed AVA from the Mt. Harlan and Chalone AVAs located within it, and if either or both of those established AVAs are so distinct that they should not be a part of the larger proposed Gabilan Mountains AVA. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Gabilan Mountains AVA on wine labels that include the term ''Gabilan Mountains'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed AVA name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will

have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the AVA.

Submitting Comments

You may submit comments on this notice by using one of the following methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2021–0009 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 206 on the TTB website at *https://www.ttb.gov/wine/wine-rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov,* visit the site and click on the ''Help'' tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 206 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name, as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments received about this proposal within Docket No. TTB–2021–0009 on the Federal e-rulemaking portal, *Regulations.gov,* at *https://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 206. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov.* For information on how to use *Regulations.gov,* click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also obtain copies of this proposed rule, all related petitions, maps and other supporting materials, and any electronic or mailed comments that TTB receives about this proposal at 20 cents per 8.5- × 11-inch page. Please note that TTB is unable to provide copies of USGS maps or any similarly-sized documents that may be included as part of the AVA petition. Contact TTB's Regulations and Rulings Division by email using the web form at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–1039, ext. 175, to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.to read as follows:

§ 9.____ Gabilan Mountains.

(a) *Name.* The name of the viticultural area described in this section is ''Gabilan Mountains''. For purposes of part 4 of this chapter, ''Gabilan Mountains'' is a term of viticultural significance.

(b) *Approved maps.* The 10 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Gabilan Mountains viticultural area are titled:

(1) Hollister, CA, 2015;
(2) Mount Harlan, CA, 2015;
(3) Paicines, CA, 2015;
(4) Bickmore Canyon, CA, 2015;
(5) North Chalone Peak, CA, 2015;
(6) Soledad, CA, 2015;
(7) Mount Johnson, CA, 2015;
(8) Gonzales, CA, 2015;
(9) Natividad, CA, 2015; and
(10) San Juan Bautista, CA, 2015.

(c) *Boundary.* The Gabilan Mountains viticultural area is located in Monterey and San Benito Counties, California. The boundary of the Gabilan Mountains viticultural area is as described as follows:

(1) The beginning point is on the Hollister map at the intersection of the 1,520-foot elevation contour and an unnamed local road known locally as San Juan Canyon Road, southeast of the southernmost intersection of San Juan Canyon Road and Hillside Road. From the beginning point, proceed south, then southeasterly along the meandering 1,520-foot elevation contour to its intersection with a west-east flowing tributary of Bird Creek in Azalea Canyon; then

(2) Proceed southeast in a straight line, crossing Azalea Canyon and the

main channel of Bird Creek, to the intersection of the 1,520-foot elevation contour an a southeast-northwest flowing tributary of Bird Creek; then

(3) Proceed generally southeasterly along the 1,520-foot elevation contour to its intersection with the eastern fork of an unnamed stream; then

(4) Proceed southeast in a straight line, crossing onto the Mount Harlan map, to the intersection of the 1,600-ft elevation contour and the northernmost unnamed creek; then

(5) Proceed generally south, then north along the 1,600-foot elevation contour to its intersection with a north-south trending tributary of Pescadero Creek; then

(6) Proceed south in a straight line, crossing Pescadero Creek, to the 1,520-foot elevation contour; then

(7) Proceed easterly along the meandering 1,520-foot elevation contour, crossing onto the Paicines map, and continuing along the 1,520-foot elevation contour as it meanders back and forth between the Mount Harlan map and the Paicines map, crossing Thompson Creek and continuing along the 1,520-foot elevation contour to its intersection with the eastern fork of an unnamed intermittent stream on the Paicines map north of Three Troughs Canyon; then

(8) Proceed southeast in a straight line to a fork in a tributary of Stone Creek east of Three Troughs Canyon; then

(9) Proceed east-southeast in a straight line, crossing onto the Bickmore Canyon map, to the intersection of an unnamed tributary of the San Benito River and the 1,520-foot elevation contour; then

(10) Proceed southeasterly along the 1,520-foot elevation contour to a point north of the confluence of Willow Creek and the South Fork of Willow Creek; then

(11) Proceed south in a straight line to the confluence of Willow Creek and the South Fork of Willow Creek; then

(12) Proceed east in a straight line to State Route 25; then

(13) Proceed southeasterly along State Route 25 to its intersection with the boundary of Pinnacles National Park; then

(14) Proceed south, then east, then generally south along the boundary of Pinnacles National Park, crossing onto the North Chalone Peak map, to the intersection of the National Park boundary and the 1,520-foot elevation contour northeast of Mann Canyon; then

(15) Proceed westerly along the 1,520-foot elevation contour to its intersection with CA–146; then

(16) Proceed southwest in a straight line, crossing onto the Soledad map, to the fork in an unnamed intermittent creek running parallel to Fabry Road; then

(17) Proceed northwest in a straight line, crossing over Stonewall Creek, the unnamed intermittent creek and its tributaries in Bryant Canyon, and a second unnamed intermittent creek, to the intersection of the 1,480-foot elevation contour and the northern terminus of a third unnamed intermittent stream; then

(18) Proceed north in a straight line to the 1,520-foot elevation contour; then

(19) Proceed southwest, then generally northwest along the meandering 1,520-foot elevation contour, crossing over the Mount Johnson map and back and forth between the Gonzales map and the Mount Johnson map to the intersection of the 1,520-foot elevation contour and an unnamed tributary of Chular Creek southeast of Espinosa Canyon on the Gonzales map; then

(20) Proceed northwest in a straight line, crossing Chular Creek and Espinosa Canyon, to the 1,520-foot elevation contour; then

(21) Proceed generally northwesterly, then northeasterly along the 1,520-foot elevation contour, crossing over the Mount Harlan, Natividad, San Juan Bautista, and Hollister maps, returning to the beginning point on the Hollister map.

Signed: August 4, 2021.

Mary G. Ryan,

Administrator.

Approved: September 24, 2021.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

Editorial Note: This document was received for publication by the Office of the Federal Register on October 29, 2021.

[FR Doc. 2021–23976 Filed 11–9–21; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0808]

RIN 1625–AA08

Safety Zone; Tchefuncte River, Madisonville, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for a fireworks display on December 4, 2021 from 9 p.m. through 10 p.m. The safety zone is needed to protect people and the environment on these navigable waters of the Tchefuncte River, LA. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port (COTP) Sector New Orleans or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before December 10, 2021.

ADDRESSES: You may submit comments identified by docket number USCG–2021–0808 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander William A. Stewart, Waterways Management Division Chief, U.S. Coast Guard; telephone 504–365–2246, email *William.A.Stewart@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
LNM Local Notice to Mariners
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On October 19, 2021, the Coast Guard received a Marine Event Permit Application for a fireworks display on December 4, 2021 from 9 p.m. through 10 p.m. The fireworks will be launched from a deck barge anchored in the Tchefuncte River at 30 23–52.4 N, 90 09–14.48 W. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP New Orleans has determined that potential hazards associated with the fireworks would be a safety concern for anyone within proximity of the deck barge. The COTP would establish a temporary safety zone with a 200-yard radius around the deck barge.

The purpose of this rulemaking is to protect people and environment on these navigable waters of the Tchefuncte

River, LA. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the COTP New Orleans or a designated representative. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The Coast Guard is proposing to establish a temporary safety zone for fireworks display on December 4, 2021 from 9 p.m. through 10 p.m. The safety zone is needed to protect people, and environment on these navigable waters of the Tchefuncte River, LA. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the COTP New Orleans or a designated representative. As used in this section, *designated representative* would mean a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector New Orleans (COTP) in the enforcement of the safety zone. To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM radio, Channel 16 or 67. Those in the safety zone would have to comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. The Coast Guard would issue (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on establishing a temporary safety zone within a 200-yard radius of the deck barge on the Tchefuncte River on December 4, 2021 from 9 p.m. to 10 p.m. Moreover, the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting one hour that would prohibit entry within a 200 yard radius around the deck barge. Normally such actions are categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the

ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2021–0808 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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 is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0808 to read as follows:

§ 165.T08–0808 Safety Zone; Tchefuncte River, Madisonville, LA.

(a) *Location.* The following area is a safety zone: All navigable waters within a 200-yard radius of the deck barge at position 30 23–52.4 N, 90 09–14.48 W on the Tchefuncte River, Madisonville, LA.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector New Orleans (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, persons and vessels may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM radio, Channel 16 or 67. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 9 p.m. through 10 p.m. on December 4, 2021.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

Dated: October 29, 2021.

W.E. Watson,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2021–24588 Filed 11–9–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 302

[Docket No. ACF–2020–0002]

RIN 0970–AC81

Optional Exceptions to the Prohibition Against Treating Incarceration as Voluntary Unemployment Under Child Support Guidelines

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: OCSE is withdrawing a previously published notice of proposed rulemaking (NPRM) that solicited public comment on two optional exceptions to the prohibition against treating incarceration as voluntary unemployment in child support cases.

DATES: The NPRM published at 85 FR 58029, September 17, 2020, is withdrawn, effective immediately.

FOR FURTHER INFORMATION CONTACT: Yvette Riddick, Division of Policy and Training, Office of Child Support Enforcement, (202) 401–4885. Email inquiries to *ocse.dpt@acf.hhs.gov.* Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: On September 17, 2020, HHS published an NPRM (85 FR 58029) to the regulations at 45 CFR part 302 on two optional exceptions to the prohibition against treating incarceration as voluntary unemployment in child support cases. The NPRM included a comment period closing on November 16, 2020.

In response to the proposed rule, HHS received comments from 9 state child support agencies, 5 child support associations, 1 elected official, 1 nonprofit organization, and 33 private individuals. Most states are in compliance with the existing prohibition against treating

incarceration as voluntary unemployment as stated in the Flexibility, Efficiency, and Modernization in Child Support Programs (FEM) final rule published in the **Federal Register** on December 20, 2016 (81 FR 93492). Setting and modifying realistic child support obligations for incarcerated parents can improve their ability to provide consistent support for their children upon release from prison. Formerly incarcerated noncustodial parents will be more likely to meet their child support obligations, benefiting their children by improving child support compliance and reliability, and reducing uncollectable debt.

Other collateral consequences associated with orders set beyond a noncustodial parent's ability to pay may also decline, such as increased underground employment activity and reduced contact with their children.

HHS is therefore withdrawing the NPRM published on September 17, 2020 (85 FR 58029).

JooYeun Chang,

Acting Assistant Secretary for Children and Families.

Xavier Becerra,

Secretary.

[FR Doc. 2021–24606 Filed 11–9–21; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

[Docket No. FWS–HQ–IA–2021-0116; FXIA16710900000–FF09A10000–212]

Wild Bird Conservation Act of 1992; 90-Day Rulings on Petitions To Add Cactus Conure and Lineolated Parakeet (Green Form) to the Approved List for Captive-Bred Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of 90-day petition rulings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day rulings on two petitions to add species to the approved list for captive-bred exotic bird species under the Wild Bird Conservation Act (WBCA) of 1992. Based on our review, we find that the petitions to add cactus conure (*Aratinga cactorum*) and lineolated parakeet (green form) (*Bolborhynchus lineola* (green form)) do not present sufficient information indicating that the petitioned actions might be warranted. Therefore, we will not seek public comments on these petitions and will take no further action in response to these petitions.

DATES: These rulings were made on November 10, 2021.

ADDRESSES: Copies of the petition and information submitted are available online in Docket No. FWS–HQ–IA–2021–0116 at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eleanora Babij, Chief, Branch of Consultation and Monitoring, 703–358–2488 (phone); 703–358–2276 (fax); or *eleanora_babij@fws.gov* (email). If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Wild Bird Conservation Act (WBCA; 16 U.S.C. 4901–4916) was enacted on October 23, 1992, to promote the conservation of exotic birds listed in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by: Ensuring that all imports of exotic bird species into the United States are biologically sustainable and not detrimental to the species; ensuring that wild bird populations are not harmed by removal of birds from the wild for importation into the United States; ensuring that imported birds are not subject to inhumane treatment during capture and transport; and assisting wild bird conservation and management programs in countries of origin.

What is the approved list for captive-bred species?

The approved list for captive-bred exotic bird species under the WBCA is authorized under the WBCA (16 U.S.C. 4905). It is a list of bird species that are regularly bred in captivity and no wild-caught birds of the species are in trade, and for which importation into the United States of captive-bred specimens is not prohibited by the WBCA. A WBCA import permit is not required if an exotic bird species is on the approved list for captive-bred exotic bird species. CITES requirements and any other applicable requirements for trade continue to apply.

The criteria for a species to be included in the approved list for captive-bred exotic bird species (''approved list'') are set forth in our regulations in title 50 of the Code of Federal Regulations (CFR) at § 15.31 (50 CFR 15.31), and the approved list is provided at 50 CFR 15.33(a).

How are bird species added to or removed from the approved list?

We periodically review and update the approved list. Under 50 CFR 15.31, to be included in the approved list, an exotic bird species must meet all of the following criteria:

(a) All specimens of the species known to be in trade (legal or illegal) are captive-bred;

(b) No specimens of the species are known to be removed from the wild for commercial purposes;

(c) Any importation of specimens of the species would not be detrimental to the survival of the species in the wild; and

(d) Adequate enforcement controls are in place to ensure compliance with paragraphs (a) through (c), above.

Additional information relating to these criteria is available in our December 2, 1994, final rule that promulgated our regulations for the WBCA list of approved species (59 FR 62255).

Further, section 110 of the WBCA (16 U.S.C. 4909) and its implementing regulations at 50 CFR part 15 set forth the procedures for petitions to add a species of exotic bird to, or remove such a species from, the approved list at 50 CFR 15.33(a). Section 110(b) of the WBCA requires that for each petition submitted in accordance with section 110(a) of the WBCA, we make a preliminary ruling on whether a petition to add a species of exotic bird to, or remove such a species from, the approved list presents sufficient information indicating that the action requested in the petition might be warranted. We are to make this preliminary ruling within 90 days of our receipt of the petition and publish the ruling in the **Federal Register** pursuant to 16 U.S.C. 4909(b)(1).

The WBCA does not expressly define what constitutes ''sufficient information indicating that the action requested in the petition might be warranted'' with regard to a 90-day preliminary ruling. Given the purposes of the WBCA, including ensuring that all imports of exotic bird species into the United States are biologically sustainable and not detrimental to the species, we interpret this language to refer to the presentation of credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition might be warranted.

As described in our implementing regulations at 50 CFR 15.31, a species of exotic bird may be added to the approved list if the species meets all of the criteria (a) through (d) set forth in that section. However, the mere assertion that the species meets all of the criteria is not enough to support a preliminary ruling that the information in the petition is sufficient information indicating that the petitioned action might be warranted. The information presented in the petition must include sufficient information indicating that each of the criteria set forth at 50 CFR 15.31 might be met.

If we find that a petition presents such sufficient information, we will then provide an opportunity for the submission of public comments on the petition, and issue and publish in the **Federal Register** a final ruling on the petition, no later than 90 days after the end of the period for public comment pursuant to 16 U.S.C. 4909(b)(2).

The WBCA places the obligation squarely on the petitioner to present the requisite level of information to meet the ''sufficient information'' test to demonstrate that the petitioned action might be warranted. Therefore, in determining whether the petition presents sufficient information, we are not required to seek out any supporting source materials beyond what is included with a given petition. As a result, we will not base our 90-day rulings on any claims for which supporting source materials have not been provided in the petition. We need not resort to supplemental information to bolster, plug gaps in, or otherwise supplement a petition that is inadequate on its face.

We note, however, in determining whether a petition presents sufficient information or not, we must determine whether the claims are credible. Therefore, it is appropriate for the Service to consider readily available information that provides context in which to evaluate whether or not the information that a petition presents is timely and up-to-date, and whether it is reliable or representative of the available information on the species, in making its determination as to whether the petition presents sufficient information. It is reasonable for the Service to be able to examine the information and claims included in a petition in light of readily available scientific information prior to committing limited Federal resources to the significant expense of a review pursuant to 16 U.S.C. 4909(b)(2). We note further that because, as discussed below, the petitions at issue here were on their face inadequate to meet the applicable standards, our 90-day rulings are based solely on the information provided in the petition—we did not consider any readily available scientific information regarding these two species.

Evaluation of a Petition To Add the Cactus Conure to the Approved List

Species and Range

Cactus conure (*Aratinga cactorum*): Brazil.

Petition History

On July 30, 2021, we received a petition dated July 30, 2021, from the Organization of Professional Aviculturists (OPA) requesting to add captive-bred cactus conures (*Aratinga cactorum*) to the approved list under the WBCA. This ruling addresses the petition.

Basis for the Ruling

Criterion (a)

Criterion (a) is that all specimens of the species known to be in trade (legal or illegal) are captive-bred. The petition states: ''This species is regularly bred in captivity in Europe. Attached to this petition are several publications relating to the captive breeding of Cactus Conure in Europe. Also attached are ads from the European website, Parrots 4 Sale, which includes several ads of Cactus Conures for sale. Also provided with this petition is a print out of the CITES trade database which shows that the last trade in wild specimens occurred in 1997. Since then, for over twenty-years, no wild caught trade has occurred. As such, this petition demonstrates that the Cactus Conure is regularly bred in European aviculture and there are no wild-caught birds of the species [are] in world trade.''

The petition includes a two-part interview published in 2016 by Parrots Daily News with Czech aviculturist Zdenek Vandelik, who keeps and breeds cactus conures and other South American parrots. With regard to cactus conure, in the first part of the interview, the breeder mentions only that he keeps and breeds a ''colony of Cactus Conure,'' and in the second part of the interview he states that he ''still keep[s] Cactus Conures in a colony system. But I am going to split the group next year because the dominant pair is the only one which breeds. Other pairs lay eggs but they do not incubate them or do not feed chicks. Therefore I need to make a change.'' Altogether, the 2016 two-part interview provides only one brief anecdote about cactus conure breeding by a single cactus conure breeder. The interview provides no information on the origin of the breeding stock or on the source of cactus conures in trade to or from the breeder. The petition also includes a section on conures from the book ''Psittaculture: A Manual for the Care and Breeding of Parrots'' by Tony Silva. The book excerpt does note that ''Cactus Conures *Eupsittula cactorum* are very popular in Brazil, where they are regarded as fairly quiet, intelligent and active pets.'' This passing reference indicates there is a popular pet trade in the species in the range country, Brazil, but the book gives no information as to whether the source of the pet trade is wild or captive-bred, legal or illegal, or whether adequate enforcement controls are in place in Brazil to ensure that wild specimens are not entering international trade through this pet trade. The petition also includes a printout of a search result for ''cactus conure'' from the European website, Parrots 4 Sale, showing links to 13 advertisements for small numbers of cactus conures for sale between 2017 and 2019 from Denmark and the Netherlands. However, the advertisements do not provide any indication of the source of the birds for sale (*i.e.,* captive-bred or wild). Of the advertisements, twelve are from a single seller in Denmark, while the thirteenth is from the Netherlands. It is not apparent from the printout whether these advertisements relate to the same or different birds, and no information is presented on whether the solicited trade took place. Although these sources briefly mention this species, they do not discuss or address the issue of whether or not all specimens of this species known to be in trade (legal and illegal) are captive-bred.

The output from the CITES Trade Database submitted with the petition shows the international trade in the species reported since 1975, with the most recently reported entry being a 2018 export of bred-in-captivity specimens from Brazil to Portugal. The petitioner notes that the last international trade in wild cactus conure reported in the CITES Trade Database was in 1997. Although the CITES Trade Database and its data contained within can be extremely valuable in examining international trade in a particular species, there are limitations of the database, including some discrepancies in reporting. However, the limited data presented show a serious discrepancy in two reported instances of trade in 2013 and in 2014 that indicate a likelihood of non-compliant trade (illegal trade). In each instance an export quantity of only 2 live specimens was reported exported from the Netherlands, but an import quantity of 4 live specimens was

reported imported to Panama. The petition provides no further information to explain these discrepancies. Additionally, during the time period from 1998 to 2018, 46 actual imports of live cactus conure were reported in the CITES Trade Database, while 86 exports of live cactus conure were reported in the CITES Trade Database. Over the time period, imports reported in the CITES Trade Database averaged only a little over 2 live birds per year, while exports reported in the CITES Trade Database averaged only a little over 4 live birds per year. While it is not possible to determine the exact reason for the discrepancies from this output alone, the discrepancy noted may indicate inaccurate reporting, incomplete reporting, reporting by exporting countries of quantities authorized for export (as opposed to actual quantities exported), high bird mortality, or instances of trade that was not conducted in accordance with CITES (illegal trade). Regardless of these discrepancies, an average of approximately 2–4 live birds in international trade annually indicates very few records of any specimens in trade, and that the species is relatively rare in aviculture. For the Service to list a species as exclusively captive-bred, the statute requires the Service to determine that the species is regularly bred in captivity and that no wild-caught birds of the species are in trade, legally or illegally. Simply noting that a species is bred in captivity is not sufficient to indicate that it is regularly bred in captivity. As explained in our 1994 final rulemaking (59 FR 62259–60), with so few records, we are not be able to make the determination required by the statute that the species is regularly bred in captivity. We noted that a purpose of the approved list for captive-bred exotic bird species is to facilitate commercial importation of captive-bred species whose trade in no way can be detrimental to populations of these species in the wild. The fundamental purpose of the WBCA is conservation of exotic bird species in the wild. For species that are rare in aviculture, individual captive-bred birds may be imported under permits for approved cooperative breeding programs, zoological breeding and display, or scientific research, pursuant to subpart C of 50 CFR part 15. The Service also recognized that with increased captive breeding efforts for those species, they may be able to meet criteria for approval in § 15.31 in the future.

Therefore, based on the limited information provided in the petition regarding trade (legal or illegal) in this species, and the indication from the limited information provided that the species is rare in aviculture, we find that the petition does not present sufficient information indicating this species might meet criterion (a) at 50 CFR 15.31.

Criterion (b)

Criterion (b) is that no specimens of the species are known to be removed from the wild for commercial purposes. While the petition mentions information and advertisements concerning the captive-breeding of cactus conures in Europe and CITES Trade Database output, as quoted above under ''Criterion (a),'' the petition does not explicitly discuss or address this criterion. No citations or supporting materials are included in the petition to indicate that no specimens of the species are known to be removed from the wild for commercial purposes. The information provided in the petition indicates that some captive breeding of this species is occurring, that a small number of birds are being offered for sale commercially, and that there are few records of international trade in the species. However, no information was provided in the petition to confirm that birds are not being removed from the wild to serve as parental stock for captive-bred specimens for commercial purposes. In addition, the petition does not provide any information on collection in the range country of this species, Brazil, indicating that no wild specimens of cactus conures are being collected for commercial purposes. As noted above, the book excerpt presented notes only that cactus conures ''are very popular in Brazil, where they are regarded as fairly quiet, intelligent and active pets.'' This reference indicates there is a popular pet trade in the species in the range country, Brazil, and may indicate demand for the species from the wild, but the book gives no information as to whether the source of the pet trade or its breeding stock is wild or captive-bred, legal or illegal, or whether adequate enforcement controls are in place in Brazil to ensure that wild specimens are not entering international trade through this pet trade. Therefore, based on the lack of information provided in the petition regarding removal of specimens from the wild for commercial purposes, we find that the petition does not present sufficient information indicating that this species might meet criterion (b) at 50 CFR 15.31.

Criterion (c)

Criterion (c) is that any importation of specimens of the species would not be detrimental to the survival of the species in the wild. Given the purposes of the WBCA, we find the factors in our CITES regulations for non-detriment findings at 50 CFR 23.61 relevant to this criterion. The petition does not discuss or provide information to address this criterion. For example, the petition provides no information relating to the status or management of the species in the wild or the effect of trade in live cactus conures on cactus conures in the wild. As noted above, with regard to the range country, Brazil, the information presented notes only that cactus conures ''are very popular in Brazil, where they are regarded as fairly quiet, intelligent and active pets.'' This reference indicates there is a popular pet trade in the species in the range country, and may indicate demand for the species from the wild, but the petition provides no information as to whether the source of the pet trade or its breeding stock is wild or captive-bred, legal or illegal, or whether adequate enforcement controls are in place in Brazil to ensure that wild specimens are not being used unsustainably as breeding stock or otherwise entering international trade through this pet trade. Therefore, based on the lack of information provided in the petition regarding whether or not the importation of specimens of this species would be detrimental to the survival of the species in the wild, we find that the petition does not present sufficient information indicating that this species might meet criterion (c) at 50 CFR 15.31.

Criterion (d)

Criterion (d) is that adequate enforcement controls are in place to ensure compliance with criteria (a) through (c). The petition does not discuss or provide information to address this criterion. As explained in our 1994 final rulemaking (59 FR 62258), it is critical that enforcement be in place and adequate in range countries and in countries of export of captive-bred birds. The Service notes that adequate enforcement in exporting countries is critical to ensure that wild-caught birds will not be misrepresented and laundered as captive-bred birds. Adequate enforcement is critical to implementation of CITES, a specified purpose of the WBCA. With regard to the range country, Brazil, the information presented notes only that cactus conures ''are very popular in Brazil, where they are regarded as fairly quiet, intelligent and active pets'' and the output from the CITES Trade Database records Brazil as an exporting country. As previously noted, the petition provides no information as to

whether adequate enforcement controls are in place in Brazil. The remaining three pieces of information presented (the interview, the advertisements, and the output from the CITES Trade Database) indicate there might be captive breeding in and/or export from several countries. No information is provided on the adequacy of enforcement for any of the exporting countries. Therefore, based on the lack of information provided in the petition regarding whether or not adequate enforcement controls are in place to ensure compliance with criteria (a) through (c), we find that the petition does not present sufficient information indicating that this species might meet criterion (d) at 50 CFR 15.31.

Our regulations at 50 CFR 15.31 state that for a species to be included in the approved list, an exotic bird species must meet all of the criteria set forth at 50 CFR 15.31. Given that the petition does not present sufficient information indicating that this species might meet any of the criteria set forth at 50 CFR 15.31, based on our review of the petition and the information submitted in the petition, we find that the petition does not present sufficient information indicating that adding the cactus conure (*Aratinga cactorum*) to the approved list might be warranted. Because the petition does not present sufficient information indicating that the petitioned action might be warranted, we are not seeking public comments in response to this petition and will take no further action in response to this petition.

Evaluation of a Petition To Add the Lineolated Parakeet (Green Form) to the Approved List

Species and Range

Lineolated parakeet (green form) (*Bolborhynchus lineola* (green form)): Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, and Venezuela.

Petition History

On August 3, 2021, we received a petition dated August 3, 2021, from the OPA and the Lineolated Parakeet Society (LPS) requesting to add captive-bred lineolated parakeet (green form) (*Bolborhynchus lineola* (green form)) to the approved list under the WBCA. This ruling addresses the petition.

In the December 2, 1994, final rule that promulgated our regulations for the WBCA list of approved species (59 FR 62259), we noted that the lineolated or barred parakeet (*Bolborhynchus lineola*), which commenters requested be included in the approved list, could not be added to the approved list for captive-bred exotic bird species because the species did not meet the criteria for approval in § 15.31(a) and wild-caught birds are in international trade. However, as further explained in our 1994 final rulemaking (59 FR 622561), the Service agreed that when a bird species' color mutation is (a) rare or nonexistent in the wild, and therefore not likely to be obtained as wild-caught stock; (b) regularly produced in captivity; and (c) distinguishable from the typical wild form and such ability to distinguish the color mutation is easy for the non-expert, then color mutations of a species may be added to the approved list. Therefore, at that time, we added the following color mutations of the lineolated or barred parakeet to the approved list: Blue, yellow and white forms (see 50 CFR 15.33(a)). However, given that the green form of the lineolated parakeet is the typical, wild color form for this bird, and, therefore, not a color mutation of the species that is rare or nonexistent in the wild or distinguishable from the typical wild form, the green form of the lineolated parakeet was not added to the approved list in 1994.

Basis for the Ruling

Criterion (a)

Criterion (a) is that all specimens of the species known to be in trade (legal or illegal) are captive-bred. The petition states: ''This species is regularly bred in captivity in Europe. Attached to this petition are several publications relating to the captive breeding of Lineolated Parakeet in Europe. Also attached are ads from several European websites listing ads of captive-bred Lineolated Parakeets for sale. Also provided with this petition is a printout of the CITES trade database which shows that the last wild trade in the species occurred in 2012 when two wild-caught Lineolated Parakeet[s] specimens were re-exported from the U.S. to Canada for scientific purposes. The data also demonstrates that the species is commonly bred in captivity. As such, this petition demonstrates that the Lineolated Parakeets are regularly bred in aviculture, *i.e.,* captivity, and no wild-caught birds of the species are in the worldwide trade.''

The petition includes an article titled, ''It's Not Easy Being Green'' Project—The Importance of Wild Type Birds: The Disappearance of Green Lineolated Parakeet'' by the Lineolated Parakeet Society (LPS), which discusses care and breeding of the species, as well as the goal of the LPS to propagate breeding of the wild, normal green color form and support a healthy stock of normal green color forms for strong breeding programs in U.S. aviculture. The petition also provided a section on South American Parakeets from the book ''Psittaculture: A Manual for the Care and Breeding of Parrots'' by Tony Silva and a 2020 account of *Bolborhynchus lineola* by the Cornell Lab of Ornithology. Although these sources provide details regarding the biology and breeding of this species, they do not discuss or address the issue of whether or not all specimens of this color form of the species known to be in trade (legal and illegal) are captive-bred. The small number of advertisements provided in the petition from four European websites show lineolated parakeets for sale in 2020 and 2021 from the United Kingdom, Germany, and the Netherlands. However, only one of the advertisements lists the green color form for sale and none of the advertisements indicate the source of the birds for sale (*i.e.,* captive-bred or wild). The output from the CITES Trade Database submitted with the petition shows the international trade in lineolated parakeet reported since 1975. Although the CITES Trade Database and its data contained within can be extremely valuable in examining international trade in a particular species, there are limitations of the database, including some discrepancies in reporting. Importantly for purposes of evaluating this petition, the CITES Trade Database does not indicate color form for the trade. Accordingly, without additional information we are unable to evaluate whether the reported trade in the CITES Trade Database is in the petitioned green form of the species. We note that even if the reported trade presented in the output were able to be attributed to the green form, then there would be a number of examples of illegal trade where commercial imports to the U.S. are reported in the time period since the enactment of the WBCA. Additionally, a serious discrepancy is shown in several reported instances of trade that indicate a likelihood of non-compliant trade (illegal trade), where an export quantity of fewer live specimens was reported exported from an exporting country, but an import quantity of more specimens was reported imported to an importing country. For example, as recently as 2019, an export quantity of 10 live specimens was reported exported from the Netherlands to Oman, but an import quantity of 100 live specimens was reported imported to Oman from the Netherlands. The petition provides no

further information to explain these discrepancies.

For the Service to list a species as exclusively captive-bred, the statute requires the Service to determine that the species is regularly bred in captivity and that no wild-caught birds of the species are in trade, legally or illegally. Simply noting that a species is bred in captivity is not sufficient to indicate that it is regularly bred in captivity. As explained in our 1994 final rulemaking (59 FR 62259–60), with so few records presented pertaining to the green form, we are not be able to make the determination required by the statute that the green form of the species is regularly bred in captivity. We noted that a purpose of the approved list for captive-bred exotic bird species is to facilitate commercial importation of captive-bred species, whose trade in no way can be detrimental to populations of these species in the wild. The fundamental purpose of the WBCA is conservation of exotic bird species in the wild.

Therefore, based on the lack of information provided in the petition regarding trade (legal or illegal) in this color form of the species, we find that the petition does not present sufficient information indicating that this color form of the species might meet criterion (a) set forth at 50 CFR 15.31.

Criterion (b)

Criterion (b) is that no specimens of the species are known to be removed from the wild for commercial purposes. While the petition mentions information and provides publications and advertisements concerning the captive-breeding of lineolated parakeets in Europe and CITES Trade Database output, as quoted above under ''Criterion (a),'' the petition does not explicitly discuss or address this criterion. No citations or supporting materials are included in the petition to indicate that no specimens of the green form of the species are known to be removed from the wild for commercial purposes. The information provided in the petition indicates that captive breeding of lineolated parakeets is occurring and that captive-bred birds are being offered for sale commercially, though as noted above little of the information presented clearly relates to the petitioned color form. However, no information was provided in the petition to confirm that birds of the petitioned color form are not being removed from the wild to serve as parental stock for captive-bred specimens for commercial purposes. In addition, the petition does not provide any information on collection in the range countries of this species indicating that no wild specimens of the green form of lineolated parakeets are being collected for commercial purposes. Therefore, based on the lack of information provided in the petition regarding removal of specimens from the wild for commercial purposes, we find that the petition does not present sufficient information indicating that this color form of the species might meet criterion (b) set forth at 50 CFR 15.31.

Criterion (c)

Criterion (c) is that any importation of specimens of the species would not be detrimental to the survival of the species in the wild. Given the purposes of the WBCA, we find the factors in our CITES regulations for non-detriment findings at 50 CFR 23.61 relevant to this criterion. The petition does not discuss or provide information to address this criterion. For example, the petition provides no information relating to the status or management of the species in the wild in any of its range countries or the effect of trade in live green form lineolated parakeets on lineolated parakeets in the wild. Therefore, based on the lack of information provided in the petition regarding whether the importation of specimens of this color form of the species would be detrimental to the survival of the species in the wild, we find that the petition does not present sufficient information indicating this color form of the species might meet criterion (c) set forth at 50 CFR 15.31.

Criterion (d)

Criterion (d) is that adequate enforcement controls are in place to ensure compliance with criteria (a) through (c). The petition does not discuss or provide information to address this criterion. As explained in our 1994 final rulemaking (59 FR 62258), it is critical that enforcement be in place and adequate in range countries and in countries of export of captive-bred birds. The Service notes that adequate enforcement in exporting countries is critical to ensure that wild-caught birds will not be misrepresented and laundered as captive-bred birds. Adequate enforcement is critical to implementation of CITES, a specified purpose of the WBCA. The petition does not provide information as to whether adequate enforcement controls are in place in any of the range countries or exporting countries for the green form of lineolated parakeet. Therefore, based on the lack of information provided in the petition regarding whether or not adequate enforcement controls are in place to ensure compliance with criteria (a) through (c), we find that the petition does not present sufficient information indicating that this color form of the species might meet criterion (d) set forth at 50 CFR 15.31.

Our regulations at 50 CFR 15.31 state that for a species to be included in the approved list, an exotic bird species must meet all of the criteria set forth at 50 CFR 15.31. Given that the petition does not present sufficient information indicating that this color form of the species might meet any of the criteria set forth at 50 CFR 15.31 based on our review of the petition and the information submitted in the petition, we find that the petition does not present sufficient information indicating that adding the lineolated parakeet (green form) (*Bolborhynchus lineola* (green form)) to the approved list might be warranted. Because the petition does not present sufficient information indicating that the petitioned action might be warranted, we are not seeking public comments in response to this petition and will take no further action in response to this petition.

Conclusion

Based on our evaluation of the information presented in the petitions under our implementing regulations at 50 CFR 15.31, we have determined that the petitions summarized above for cactus conure (*Aratinga cactorum*) and lineolated parakeet (green form) (*Bolborhynchus lineola* (green form)) do not present sufficient information indicating that the petitioned actions might be warranted. Therefore, we will not seek public comments on these petitions and will take no further action in response to these petitions.

Author

The primary author of this document is a staff member of the Division of Scientific Authority, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Wild Bird Conservation Act (16 U.S.C. 4901–4916 *et seq.*).

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–24629 Filed 11–8–21; 11:15 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 86, No. 215
Wednesday, November 10, 2021

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 COMMERCE

Office of the Under Secretary for Economic Affairs

Advisory Committee on Data for Evidence Building; Meeting

AGENCY: Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Office of the Under Secretary for Economic Affairs is providing notice of two upcoming meetings of the Advisory Committee on Data for Evidence Building (ACDEB or Committee). These will constitute the fourteenth and fifteenth meetings of the Committee in support of its charge to review, analyze, and make recommendations on how to promote the use of Federal data for evidence building purposes. At the conclusion of the Committee's first and second year, it will submit to the Director of the Office of Management and Budget, Executive Office of the President, an annual report on the activities and findings of the Committee. This report will also be made available to the public.

DATES: November 19, 2021; January 21, 2022. The meetings will begin at approximately 9:00 a.m. and adjourn at approximately 12:00 p.m. (ET). Each meeting will be held virtually.

ADDRESSES: Those interested in attending the Committee's public meetings are requested to RSVP to *Evidence@bea.gov* one week prior to each meeting. Agendas, background material, and meeting links will be accessible 24 hours prior to each meeting at *www.bea.gov/evidence.*

Members of the public who wish to submit written input for the Committee's consideration are welcomed to do so via email to *Evidence@bea.gov.* Additional opportunities for public input will be forthcoming.

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, U.S. Department of Commerce, 4600 Silver Hill Road (BE–64), Suitland, MD 20746; phone (301) 278–9282; email *Evidence@bea.gov.*

SUPPLEMENTARY INFORMATION: The Foundations for Evidence-Based Policymaking Act (Pub. L. 115–435, Evidence Act 101(a)(2) (5 U.S.C. 315 (a)), establishes the Committee and its charge. It specifies that the Chief Statistician of the United States shall serve as the Chair and other members shall be appointed by the Director of the Office of Management and Budget (OMB). The Act prescribes a membership balance plan that includes: One agency Chief Information Officer; one agency Chief Privacy Officer; one agency Chief Performance Officer; three members who are agency Chief Data Officers; three members who are agency Evaluation Officers; and three members who are agency Statistical Officials who are members of the Interagency Council for Statistical Policy established under section 3504(e)(8) of title 44. Additionally, at least 10 members are to be representative of state and local governments and nongovernmental stakeholders with expertise in government data policy, privacy, technology, transparency policy, evaluation and research methodologies, and other relevant subjects. Committee members serve for a term of two years. Following a public solicitation and review of nominations, the Director of OMB appointed members per this balance plan and information on the membership can be found at *www.bea.gov/evidence.* Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term.

The ACDEB is interested in the public's input on the issues it will consider, and requests that interested parties submit statements to the ACDEB via email to *Evidence@bea.gov.* Please use the subject line ''ACDEB Meeting Public Comment.'' All statements will be provided to the members for their consideration and will become part of the Committee's records. Additional opportunities for public input will be forthcoming as the Committee's work progresses.

ACDEB Committee meetings are open, and the public is invited to attend and observe. Those planning to attend are asked to RSVP to *Evidence@bea.gov.* The call-in number, access code, and meeting link will be posted 24 hours prior to each meeting on *www.bea.gov/evidence.* The meetings are accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at *Evidence@bea.gov* two weeks prior to each meeting.

Dated: October 18, 2021.

Gianna Marrone,

Alternate Designated Federal Official, U.S. Department of Commerce.

[FR Doc. 2021–24533 Filed 11–9–21; 8:45 am]

BILLING CODE 3510–MN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–883]

Glycine From India: Final Results of Antidumping Duty Administrative Review; 2018–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that producers or exporters subject to this administrative review made sales of subject merchandise below normal value during the period of review October 31, 2018, through May 31, 2020.

DATES: Applicable November 10, 2021.

FOR FURTHER INFORMATION CONTACT: Preston Cox or Yang Jin Chun, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5041 or (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2021, Commerce published the *Preliminary Results* of the 2018–2020 administrative review of the antidumping duty order on glycine from India.[1] For a complete description of the

[1] *See Glycine from India: Preliminary Results of Antidumping Duty Administrative Review; 2018–2020,* 86 FR 35733 (July 7, 2021) (*Preliminary*

events that followed the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the order is glycine. For a complete description of the scope of this administrative review, *see* the Issues and Decision Memorandum.[3]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by interested parties in this review are discussed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be found at *https://access.trade.gov/public/FRNoticesListLayout.aspx.* A list of the topics included in the Issues and Decision Memorandum is attached as an appendix to this notice.

Changes Since the Preliminary Results

Based on a review of the record and our analysis of the comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, we did not make changes to the *Preliminary Results.*

Rates for Non-Selected Respondents

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. For the respondents that were not selected for individual examination in this administrative review, we have assigned to them the simple average of the margins for Avid Organics Private Limited and Kumar Industries/Rudraa International,[4] consistent with the guidance in section 735(c)(5)(B) of the Act.[5]

Final Results of Review

We determine that the following estimated weighted-average dumping margins exist for the period October 31, 2018, through May 31, 2020.

Producer/exporter	Estimated weighted-average dumping margin (percent)
Avid Organics Private Limited	0.00
Kumar Industries/Rudraa International	13.61
Mulji Mehta Enterprises	6.81
Mulji Mehta Pharma	6.81
Paras Intermediates Private Ltd	6.81
Studio Disrupt	6.81

Disclosure

Normally, Commerce discloses the calculations performed in connection with the final results of an administrative review to parties in the proceeding within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, as noted above, Commerce has made no changes to its margin calculations since the *Preliminary Results.* Commerce disclosed its preliminary margin calculations to parties in this proceeding, and there are no additional calculations to disclose.[6]

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For any individually-examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales, in accordance with 19 CFR 351.212(b)(1).[7] Where either a respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[8] For entries of subject merchandise during the period of review produced by any of these companies for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[9]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication). The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the notice of these final results of administrative review for all shipments of glycine from India entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the

Results), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Glycine from India: Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review; 2018–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Issues and Decision Memorandum at 2–3.

[4] We continue to treat Kumar Industries and Rudraa International as a collapsed single entity for the final results of this review. *See Preliminary Results,* 86 FR at 35734, and accompanying PDM at 3–4.

[5] *See* Issues and Decision Memorandum for more details.

[6] *See* Memorandums, ''Administrative Review of the Antidumping Duty Order on Glycine from India; 2018–2020: Preliminary Analysis Memorandum for Avid Organics Private Limited,'' dated June 30, 2021 and ''Glycine from India: Preliminary Application of Adverse Facts Available to Kumar Industries,'' dated June 30, 2021.

[7] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[8] *Id.* at 8102–03; *see also* 19 CFR 351.106(c)(2).

[9] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 7.23 percent, the all-others rate established in the less-than-fair-value investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221.

[10] *See Glycine from India and Japan: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders,* 84 FR 29170, 29171 (June 21, 2019).

Dated: November 4, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
Comment 1: Application of Total Adverse Facts Available
Comment 2: Use of Constructed Value To Calculate Normal Value
Comment 3: Application of Total Adverse Facts Available
Comment 4: Selection of the Adverse Facts Available Rate
Comment 5: Voluntary Respondent Request for Paras
V. Recommendation

[FR Doc. 2021–24579 Filed 11–9–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 27, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 17–00167, sustaining the Department of Commerce (Commerce)'s second remand results pertaining to the administrative review of the antidumping duty (AD) order on diamond sawblades and parts thereof from the People's Republic of China (China) covering the period from November 1, 2014, through October 31, 2015. Commerce is notifying the public that it is amending the final results of review with respect to the dumping margin assigned to Bosun Tools Co., Ltd. (Bosun) and the 22 non-selected respondents that received a separate rate.

DATES: Applicable November 6, 2021.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2017, Commerce published its *Final Results* in the 2014–2015 AD administrative review of diamond sawblades and parts thereof from China. Commerce calculated a rate of 6.91 for Bosun and assigned that rate to the non-selected respondents that received a separate rate.[1]

The Diamond Sawblades Manufacturers' Coalition (the petitioner) appealed Commerce's *Final Results.* On October 23, 2018, the CIT remanded the *Final Results* to Commerce to further clarify or reconsider Commerce's conclusion that Bosun acted to the best of its ability in responding to Commerce's requests for information.[2]

In its first remand redetermination, issued in April 2019, Commerce concluded that Bosun failed to cooperate to the best of its ability and applied a rate based entirely on adverse facts available (AFA) to Bosun; Commerce also assigned that rate to the non-selected respondents that received a separate rate.[3] The CIT sustained the first remand redetermination, but later remanded for a second time for further proceedings in conformity with the opinion of the Court of Appeals for the Federal Circuit, which ruled that Commerce needed to determine whether there was any basis to disregard the Bosun-supplied origin information for certain sales to unaffiliated U.S. customers during the period of review.[4]

In its second remand redetermination, issued in July 2021, Commerce found that AFA was appropriate to apply to only certain of Bosun's sales to U.S. customers. Accordingly, Commerce recalculated Bosun's margin and assigned Bosun's rate to the non-selected respondents that received a separate rate.[5] The CIT sustained Commerce's final redetermination.[6]

[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 82 FR 26912 (June 12, 2017) (*Final Results*).

[2] *See Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 17–00167, Slip Op. 18–146 (CIT October 23, 2018).

[3] *See Final Remand Redetermination, Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 17–00167, Slip Op. 18–146, dated April 17, 2019, available at *https://access.trade.gov/resources/remands/18-146.pdf.*

[4] *See Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 17–00167 (CIT March. 25, 2021) (referencing *Diamond Sawblades Mfrs. Coal.* v. *United States,* 986 F.3d 1351 (CAFC 2021)).

[5] *See Final Remand Redetermination, Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 17–00167, Appeal No. 20–1478, dated July 13, 2021.

[6] *See Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 17–00167, Slip Op. 21–150 (CIT October 27, 2021).

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Bosun and the 22 non-selected respondents that received a separate rate as follows:

Company	Amended final margin (percent)
Bosun Tools Co., Ltd	15.91
Chengdu Huifeng Diamond Tools Co., Ltd	15.91
Danyang Hantronic Import & Export Co., Ltd	15.91
Danyang Huachang Diamond Tools Manufacturing Co., Ltd	15.91
Danyang Like Tools Manufacturing Co., Ltd	15.91
Danyang NYCL Tools Manufacturing Co., Ltd	15.91
Danyang Weiwang Tools Manufacturing Co., Ltd	15.91
Guilin Tebon Superhard Material Co., Ltd	15.91
Hangzhou Deer King Industrial and Trading Co., Ltd	15.91
Hangzhou Kingburg Import & Export Co., Ltd	15.91
Huzhou Gu's Import & Export Co., Ltd	15.91
Jiangsu Inter-China Group Corporation	15.91
Jiangsu Youhe Tool Manufacturer Co., Ltd	15.91
Qingyuan Shangtai Diamond Tools Co., Ltd	15.91
Quanzhou Zhongzhi Diamond Tool Co., Ltd	15.91
Rizhao Hein Saw Co., Ltd	15.91
Saint-Gobain Abrasives (Shanghai) Co., Ltd	15.91
Shanghai Jingquan Industrial Trade Co., Ltd	15.91
Sino Tools Co., Ltd	15.91
Weihai Xiangguang Mechanical Industrial Co., Ltd	15.91
Wuhan Wanbang Laser Diamond Tools Co., Ltd	15.91
Xiamen ZL Diamond Technology Co., Ltd	15.91
Zhejiang Wanli Tools Group Co., Ltd	15.91

Cash Deposit Requirements

Because all the exporters listed above have a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice does not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from issuing instructions to liquidate entries that were exported by Bosun Tools Co., Ltd., and imported by or sold to (as indicated on the commercial invoice or Customs documentation) Bosun Tools, Inc. or Bosun Tools Inc., or exported by the non-selected respondents that received a separate rate, and were entered, or withdrawn from warehouse, for consumption during the period November 1, 2014, through October 31, 2015. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, is upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise exported by Bosun Tools Co., Ltd., and imported by or sold to (as indicated on the commercial invoice or Customs documentation) Bosun Tools, Inc. or Bosun Tools Inc., or exported by the non-selected respondents that received a separate rate in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an import-specific *ad valorem* assessment rate is zero or *de minimis,*[7] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: November 4, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–24578 Filed 11–9–21; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Coastal and Estuarine Land Conservation Planning, Protection or Restoration

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 10, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0459 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Cathy Ross, PRA Coordinator, NOAA Ocean Service, 1305 East-West Hwy, *catherine.ross@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA's Office for Coastal Management requests the extension of a currently approved information collection NOAA has, or is given, authority under the Coastal Zone Management Act (CZMA), annual appropriations or other authorities, to issue funds to coastal states, localities or other recipients for planning, conservation, acquisition, protection, restoration, or construction projects. The required information enables NOAA to implement the Coastal and Estuarine Land Conservation Program (CZMA Section 307A), under its current or future authorization, and facilitate the review of similar projects under different, but related, authorities, including the National Estuarine Research Reserve System (CZMA Section 315) Land Acquisition and Construction program, the Coastal Zone Management Program's low-cost acquisition and construction program (CZMA Section 306A), or the Fish and Wildlife Coordination Act.

This collection covers the development of state coastal land conservation plans, and collection of information specifically needed for applying for and carrying out land acquisition, restoration, and construction projects, such as: Appraisals, property surveys and site plans, legal documentation such as deeds, easements and/or plats, and information needed for environmental compliance reviews. Such information is collected from project applicants or sub-recipients, which are typically state or local government agencies, but may also include nongovernmental or tribal organizations.

The information will be used in evaluating project proposals, reviewing the location and impact of proposed activities, documenting compliance with the National Environmental Policy Act and other applicable statutes, and conducting due diligence on market value, title encumbrances, property boundaries, proper recording of legal instruments. No changes are proposed to the collection.

II. Method of Collection

Electronic formats are the preferred method for submitting CELCP plans, project applications, performance reports and other required materials. However, respondents may submit materials in electronic or paper formats. Project applications are normally submitted electronically via *Grants.gov* but may be submitted by mail in paper form if electronic submittal is not a viable option. Methods of submittal for plans, performance reports or other required materials may include electronic submittal via email or NOAA Grants Online, mail and facsimile transmission of paper forms, or submittal of electronic files on compact disc.

III. Data

OMB Control Number: 0648–0459.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: State, Local, or Tribal Government; not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time per Response: CELCP Plans, 120 hours to develop, 35 hours to revise or update; project application and checklist, 20 hours; semi-annual and annual reporting, 5 hours each.

Estimated Total Annual Burden Hours: 1,410.

Estimated Total Annual Cost to Public: $205 in recordkeeping/reporting costs.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Coastal Zone Management Act (16 U.S.C. 1451, et seq).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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 ICR. 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 may 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.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–24603 Filed 11–9–21; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent To Conduct Scoping and To Prepare a Draft Environmental Impact Statement for the Proposed Chumash Heritage National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of intent to prepare a draft environmental impact statement and hold public scoping meetings; request for comments.

SUMMARY: In accordance with the National Marine Sanctuaries Act (NMSA), the National Oceanic and Atmospheric Administration (NOAA) is initiating a process to consider designating a portion of waters along and offshore of the central coast of California as a national marine sanctuary. NOAA is initiating this process based on the area's qualities and boundaries as described in the community-based nomination [1] submitted on July 17, 2015, excluding any geographical overlap of the boundaries proposed for the Morro Bay 399 Area as described in the July 29,

[1] *https://nmsnominate.blob.core.windows.net/nominate-prod/media/documents/nomination_chumash_heritage_071715.pdf.*

2021 **Federal Register** notice.[2] The designation process will be conducted concurrently with a public process under the National Environmental Policy Act (NEPA) to prepare an environmental impact statement. NOAA is initiating this public scoping process to invite comments on the scope and significance of issues to be addressed in the environmental impact statement that are related to designating this area as a national marine sanctuary. The results of this scoping process will assist NOAA in moving forward with the designation process, including preparation and release of draft designation documents, and in formulating alternatives for the draft environmental impact statement, including developing national marine sanctuary boundaries, regulations, and a management plan. This scoping process will also inform the initiation of any consultations with federal, state, or local agencies, tribes, and other interested parties, as appropriate.

DATES: Comments are due by January 10, 2022. NOAA will host virtual public scoping meetings at the following dates and times:

- Wednesday, December 8, 2021, 6 p.m.–9 p.m. Pacific Time
- Monday, December 13, 2021, 1 p.m.–4 p.m. Pacific Time
- Thursday, January 6, 2022, 4 p.m.–7 p.m. Pacific Time

NOAA may end a meeting before the time noted above if all those participating have completed their oral comments.

ADDRESSES: You may submit comments on this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov* and enter ''NOAA–NOS–2021–0080'' in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send any hard copy public comments by mail to: Paul Michel, NOAA Sanctuaries West Coast Regional Office, 99 Pacific Street, Building 100F, Monterey, CA 93940.
- *Public Scoping Meetings:* Provide oral comments during virtual public scoping meetings, as described under **DATES**. Webinar registration details and additional information about how to participate in these public scoping meetings is available at *www.sanctuaries.noaa.gov/chumash-heritage.*

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *https://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Paul Michel, (831) 241–4217, *paul.michel@noaa.gov,* West Coast Region Policy Coordinator.

SUPPLEMENTARY INFORMATION:

Background on Sanctuary Nomination.

The National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.,* authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to the NOAA Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect the resources of the National Marine Sanctuary System.

In July 2015, Fred Collins, on behalf of the Northern Chumash Tribal Council, submitted a nomination to NOAA through the Sanctuary Nomination Process (79 FR 33851), asking NOAA to consider designating an area on the central California coast as a national marine sanctuary. The nomination has been endorsed by a diverse coalition of organizations and individuals at tribal, local, state, regional, and national levels including elected officials, businesses, recreational users, conservation groups, fishing associations, tourism companies, museums, historical societies, and education groups. The submitted nomination package is available at: *https://nominate.noaa.gov/nominations/.* The nomination asks NOAA to protect this nationally significant area for its culturally and biologically important resources. The nomination also identifies opportunities for NOAA to expand upon existing local and state efforts to study, interpret, and manage the area's unique cultural and biological resources.

NOAA added the area to the inventory of nominations that are eligible for designation in October 2015 and extended it on the inventory in September 2020 at the five-year interval after a review of the nomination (85 FR 61935). NOAA is now initiating the process to potentially designate the nominated area, excluding any geographical overlap of the boundaries proposed for the Morro Bay 399 Area in the July 29, 2021 **Federal Register** Notice of Commercial Leasing for Wind Power Development on the Outer Continental Shelf (OCS) Offshore Morro Bay, California, East and West Extensions—Call for Information and Nominations (86 FR 40869), as a national marine sanctuary. The proposed designation is consistent with the Biden-Harris Administration's complementary goals to tackle the climate crisis per Executive Order 14008,[3] including by conserving and restoring ocean and coastal habitats, supporting tribally and locally led stewardship, and advancing offshore wind and other clean energy projects.

The proposed national marine sanctuary would run along the mean high tide line from approximately Cambria at the terminal boundary of Monterey Bay National Marine Sanctuary (MBNMS), south along the San Luis Obispo County coast, excluding Morro Bay harbor and Port San Luis, and then further south to include the coast of Santa Barbara County to approximately Gaviota Creek, then offshore in a southwest direction along the western end of Channel Islands National Marine Sanctuary (CINMS), southward to include Rodriguez Seamount and shifting to the northwest to include the Santa Lucia Bank, to reconnect with the boundary for MBNMS offshore Cambria, and following that boundary eastward to the point of origin at the shoreline. As stated above, the proposed sanctuary designation excludes the area that geographically overlaps the proposed Morro Bay 399 Area. NOAA estimates the area encompassed in the proposed designation is approximately 7,000 square miles. A map of the proposed area can be found at *https://sanctuaries.noaa.gov/chumash-heritage.*

The area contains unique and diverse ecosystems essential to the heritage of the Chumash, one of the few ocean-going bands among the First Peoples of the Pacific Coast. The marine

[2] *https://www.federalregister.gov/documents/2021/07/29/2021-16134/commercial-leasing-for-wind-power-development-on-the-outer-continental-shelf-ocs-offshore-morro-bay.*

[3] *https://www.federalregister.gov/documents/2021/02/01/2021-02177/tackling-the-climate-crisis-at-home-and-abroad.*

environment provides a special sense of place to coastal communities and visitors because of its significant historic, archaeological, cultural, aesthetic and biological resources. The area has special ecological qualities as well, shaped by significant offshore geologic features (*e.g.,* Rodriguez Seamount, Santa Lucia Bank and Arguello Canyon). Seasonal upwelling serves as the engine of the area's high biological productivity, supporting dense aggregations of marine life. The presence of a biogeographic transition zone, where temperate waters from the north meet the subtropics, creates an area of nationally significant biodiversity in sea birds, marine mammals, invertebrates, and fishes. The area is also known for its extensive kelp forests, seagrass beds, and wetlands that serve as nurseries for numerous commercial fish species and as important habitat for many threatened and endangered species such as humpback whales, blue whales, the southern sea otter, black abalone, snowy plovers and leatherback sea turtles.

The area being considered for sanctuary designation also contains more than 200 known shipwrecks. The area off Point Conception is a significant feature in California's long maritime history, with vessels regularly traversing the coast and, on occasion, sinking in this region. This collection of shipwrecks and overall maritime landscape are nationally significant because of the representativeness of the shipwrecks, their location on one of the nation's most historically important transportation corridors, and the potential for the discovery of other shipwrecks and submerged pre-contact cultural sites.

Proponents of the national marine sanctuary have also highlighted the maritime history and cultural heritage of the Chumash Tribal nation with the sanctuary proposal. Some of the earliest documented human habitation of North America is in this region and various bands of Chumash and other indigenous Tribes have deep cultural connections to this area of central California. While much of the coast of San Luis Obispo and Santa Barbara counties has been surveyed for Native American artifacts and settlements, the continental shelf may well hold yet undiscovered paleoshorelines and archaeological resources worthy of study and conservation.

Coastal communities are spread along the coastline of San Luis Obispo County. There are two primary entry points for vessels—Morro Bay and Port San Luis. Further south in Santa Barbara County, the coast is remote with more limited access, such as in and around Vandenberg Space Force Base or Hollister Ranch. Current human uses include commercial and recreational fishing, kayaking, surfing, diving, wildlife watching, research and general recreation such as beach walking or boating.

I. Purpose and Need for Sanctuary Designation

The purpose and need for the designation is to fulfill the purposes and policies outlined in Section 301(b) of the NMSA, 16 U.S.C. 1431(b), including to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance, provide authority for comprehensive and coordinated conservation and management of these marine areas, and to protect the resources of these areas. In particular, the proposed designation would:

- Develop coordinated and collaborative marine science, education and outreach, cultural heritage programs to assist in managing the area's nationally significant resources;
- Highlight the many diverse human activities, cultural connections and maritime heritage of the area, from the various First Nations to existing activities in the area;
- Respond to community interest in conserving the natural environments, wildlife and cultural resources of this area; and
- Provide additional conservation and comprehensive ecosystem-based management to address threats to the nationally significant resources of the proposed sanctuary.

II. Preliminary Description of Proposed Action and Alternatives

NOAA's proposed action is to consider designating Chumash Heritage National Marine Sanctuary, as described in, Background on Sanctuary Nomination, via the sanctuary designation process detailed in section 304 of the NMSA (16 U.S.C. 1434). As part of the sanctuary designation process, NOAA will develop draft designation documents including a draft sanctuary management plan, proposed sanctuary regulations, and proposed terms of designation. Each national marine sanctuary has management programs developed with public input and crafted to meet the specific issues and resources found in that sanctuary. The NEPA process for sanctuary designation will include preparation of a draft environmental impact statement (DEIS) to consider alternatives and describe potential effects of the sanctuary designation on the human environment. The DEIS will evaluate a reasonable range of action alternatives that could include different options for sanctuary regulations, potential boundaries, and management plan goals. The DEIS will also consider a No Action Alternative, wherein NOAA would not designate the proposed sanctuary. The results of this scoping process will assist NOAA in formulating alternatives for the DEIS, including options for sanctuary boundaries, regulations, and a management plan. Reasonable alternatives that are identified during the scoping period will be evaluated in the DEIS.

III. Summary of Expected Impacts of Sanctuary Designation

The DEIS will identify and describe the potential effects of the Proposed Action, and reasonable alternatives, on the human environment. Potential impacts may include, but are not limited to, impacts on the area's: Natural marine resources, including habitats, plants, birds, sea turtles, marine mammals, and special status species; maritime, cultural and historic resources, including Traditional Cultural Properties and archaeological sites; human uses and socioeconomics of the area, such as research, recreation, education, energy development, cultural practices, fishing. Based on a preliminary evaluation of the resources listed above, NOAA expects potential impacts of enhanced protection of the area's natural, cultural and historic resources; improved planning and coordination of research, monitoring, and management actions; reducing harmful human activities and disturbance of special status species; restoration of native habitat and species populations; reducing threats and stressors to resources; and minimal disturbance during research or restoration actions.

IV. Process for Sanctuary Designation and Environmental Review

The designation process includes the following well-established and highly participatory stages:

1. Public Scoping Process—Information collection and characterization, including the consideration of public comments received during scoping;

2. Preparation of Draft Documents—Preparation and release of draft designation documents, including: A DEIS, prepared pursuant to NEPA, that identifies boundary and/or regulatory alternatives; a draft management plan; and a notice of proposed rulemaking to define proposed sanctuary regulations. Draft documents would be used to

initiate consultations with federal, state, or local agencies, tribes and other interested parties, as appropriate;

3. Public Comment—Through public meetings and in writing, allow for public review and comment on the DEIS, draft management plan, and notice of proposed rulemaking;

4. Preparation of Final Documents—Preparation and release of a final environmental impact statement (FEIS), final management plan, including a response to public comments, and a final rule and regulations.

5. The sanctuary designation and regulations would take effect after the end of a review period of forty-five days of a continuous session of Congress. During this same period, should the designation include state waters, the Governor of the state has the opportunity to concurrently review the terms of designation including boundaries within state waters.

Schedule for the Decision-Making Process

NOAA expects to make the DEIS and other draft documents available to the public by late 2022. NOAA expects to make the FEIS available to the public in Fall 2023. A Record of Decision and the final management plan and final rule will be completed no sooner than 30 days after the FEIS is made available to the public, in accordance with 40 CFR 1506.11.

NEPA Lead and Cooperating Agency Roles

NOAA is the lead federal agency for the NEPA process for the Proposed Action. NOAA may invite other federal, Tribal, or State and local government agencies to become cooperating agencies in the preparation of this EIS. NEPA regulations specify that a cooperating agency means any Federal agency (and a State, Tribal, or local agency with agreement of the lead agency) that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) (40 CFR 1508.1(e)).

V. Public Scoping Process

With this notice, NOAA is initiating a public scoping process to gather input from individuals, organizations, federal agencies, and state, tribal, and local governments on the proposed designation of Chumash Heritage National Marine Sanctuary. NOAA intends to use this process to determine the scope and significant issues to be analyzed in depth in the DEIS, with consideration of the scoping factors and responsibilities provided in 40 CFR 1501.9. NOAA specifically requests comments on the following topics, including the identification of potential alternatives, information, and analyses relevant to the proposed action:

- The spatial extent of the proposed sanctuary and boundary alternatives NOAA should consider, starting with the boundary as described in Section. Background on Sanctuary Nomination;
- the location, nature, and value of the resources, including natural and submerged cultural resources as well as the indigenous heritage of the area, that would be protected by a sanctuary;
- potential positive and negative impacts to those resources;
- the management plan and regulatory framework most appropriate to the resources in the area, including compatible and incompatible uses;
- the potential socioeconomic, cultural, and biological impacts of designation;
- the potential to highlight the indigenous history and culture of the area;
- the potential to support research and advance scientific understanding;
- information regarding historic properties in the area and the potential effects to those historic properties to support National Historic Preservation Act compliance under Section 106;
- opportunities to benefit the ''blue economy'' of the region, including promoting sustainable tourism and recreation;
- potential name for the new sanctuary;
- the potential to advance multiple, complementary priorities of the Federal administration, the Department of Commerce, and NOAA, including conserving and restoring ocean and coastal habitats, supporting Tribally and locally led stewardship, and advancing offshore wind and other clean energy projects;
- the potential location of an administrative office as well as coastal education facilities including possibly a visitor center; and
- other information relevant to the designation and management of a new sanctuary in this proposed area.

Comments may be submitted to NOAA by January 10, 2022 using the methods described in **ADDRESSES**. NOAA will host public scoping meetings during the public comment period, as described under **DATES**.

VI. Anticipated Permits, Authorizations, and Consultations

Federal, state, and local permits, authorizations, or consultations may be required for the Proposed Action, including consultation or review under the Endangered Species Act, 16 U.S.C. 1531 *et seq.,* Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* National Historic Preservation Act, 54 U.S.C. 300101 *et seq.,* and Executive Order 13175, consistency review under the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.,* and possibly reviews under other laws and regulations determined to be applicable to the proposed action. To the fullest extent possible, NOAA will prepare the DEIS concurrently with and integrated with analyses required by other Federal environmental review requirements, and the DEIS will list all Federal permits, licenses, and other authorizations that must be obtained in implementing the proposed action. *See* 40 CFR 1502.24.

Consultation Under Section 106 of the National Historic Preservation Act and Executive Order 13175

This notice confirms that NOAA will coordinate its responsibilities under section 106 of the National Historic Preservation Act during the sanctuary designation process and is soliciting public and stakeholder input to meet section 106 compliance requirements. The section 106 consultation process specifically applies to any agency undertaking that may affect historic properties. Pursuant to 36 CFR 800.16(1)(1), historic properties include: ''Any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register criteria.''

This notice also confirms that, with respect to the proposed sanctuary designation process, NOAA will fulfill its responsibilities under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' and NOAA implementing policy and procedures. Executive Order 13175 requires federal agencies to establish procedures for meaningful consultation and coordination with Tribal officials in the development of federal policies that have Tribal implications. NOAA implements Executive Order 13175 through the NOAA Administrative Order 218–8 (Policy on Government-to-Government Consultation with Federally Recognized Indian Tribes and Alaska Native Corporations), and the

NOAA Tribal Consultation Handbook. Under these policies and procedures, NOAA offers affected federally recognized Tribes government-to-government consultation at the earliest practicable time it can reasonably anticipate that a proposed policy or initiative may have Tribal implications.

Authority: 16 U.S.C. 1431 *et seq.*; 42 U.S.C. 4321 *et seq.*; 40 CFR 1500–1508 (NEPA Implementing Regulations); Companion Manual for NOAA Administrative Order 216–6A.

John Armor,

Director, Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2021–24609 Filed 11–9–21; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB573]

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that permits and permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D. (Permit Nos. 20532–01 and 25740) and Sara Young (Permit No. 25786); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

TABLE 1—ISSUED PERMITS AND PERMIT AMENDMENTS

Permit No.	RTID	Applicant	Previous **Federal Register** Notice	Issuance date
20532–01	0648–XE766	Stephen John Trumble, Ph.D., Baylor University, 101 Bagby Avenue, Waco, TX 76706.	84 FR 10795; March 22, 2019.	October 19, 2021.
25740	0648–XB363	Center for Coastal Studies, 5 Holway Avenue, Provincetown, MA 02657 (Responsible Party: Richard Delaney).	86 FR 47478; August 25, 2021.	October 26, 2021.
25786	0648–XB299	NMFS' Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla, CA 92037 (Responsible Party: George Watters, Ph.D.).	86 FR 42790; August 5, 2021.	October 26, 2021.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: November 4, 2021.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–24518 Filed 11–9–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB567]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability; proposed evaluation and pending determinations for five resource management plans in the Hood Canal Basin.

SUMMARY: Notice is hereby given that NMFS has drafted Proposed Evaluation and Pending Determinations (PEPD) for five resource management plans (RMPs) for the rearing and releasing Chinook salmon, coho salmon, and chum salmon, and for research of Puget Sound Steelhead in the Hood Canal Basin of Washington State. The RMPs are in the form of hatchery and genetic management plans (HGMPs) for hatchery programs operated by Long Live the Kings (LLTK), the Port Gamble S'Klallam Tribe (PGST), the Skokomish Tribe (ST), and Washington Department of Fish and Wildlife (WDFW). In 2016 NMFS certified that the five HGMPs satisfied limit 6 of the 4(d) rule. The revised HGMPs will replace the versions of the same plans now in place. NMFS is notifying the public of the availability and opportunity to comment on PEPDs for the new programs. The hatchery programs are intended to contribute to fulfilling Federal tribal trust responsibilities and treaty rights guaranteed through treaties and affirmed in *U.S.* v. *Washington* (1974). The program operators submitted revised HGMPs for the following changes: (1) Improve the available forage to southern resident killer whales; and (2) investigate genetic diversity of Puget Sound Steelhead and the effects of release timing on marine survival of fall Chinook salmon.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than 5 p.m. Pacific time on December 10, 2021. Comments received after this date may not be considered.

ADDRESSES: Written comments should be addressed to the NMFS Sustainable Fisheries Division, 1201 NE Lloyd Blvd., Portland, OR 97232. Comments may be submitted by email. The mailbox address for providing email comments is: *Hatcheries.Public.Comment@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Hood Canal hatchery programs.

FOR FURTHER INFORMATION CONTACT: Scott Sebring at (360) 819–7873 or by email at *scott.sebring@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Endangered Species Act (ESA)-Listed Species Covered in This Notice

- Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*): Threatened, naturally and artificially propagated;
- Puget Sound Steelhead (*O. mykiss*): Threatened, naturally and artificially propagated; and
- Hood Canal summer chum salmon (*O. keta*): Threatened.

Background

Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may make exceptions to the take prohibitions in section 9 of the ESA for programs that are approved by NMFS under the 4(d) rule for salmon and steelhead (50 CFR 223.203(b)).

The operators and funding agencies, including the LLTK, PGST, ST, and WDFW, have submitted revised HGMPs to NMFS pursuant to NMFS' 4(d) rule of the ESA for hatchery activities. The operators propose to provide additional forage to southern resident killer whales, a species listed as endangered under the ESA that relies on adult salmon as a food resource. The operators of the Hood Canal steelhead supplementation program propose to investigate genetic effects of natural-origin steelhead dispersal throughout the Hood Canal Basin. The operators of the Hoodsport fall Chinook salmon program propose to investigate the effects of release timing on survival of adult fall Chinook salmon, a non-ESA-listed stock.

Authority: 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.*

Dated: November 5, 2021.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–24572 Filed 11–9–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

DATES: October 29, 2021.

FOR FURTHER INFORMATION CONTACT: Barbara Smith, Civilian Senior Leader Management Office, 111 Army Pentagon, Washington, DC 20310–0111, email: *Barbara.M.Smith.civ@army.mil* or Phone: (703) 693–1126.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The Department of the Army Performance Review Board will be composed of a subset of the following individuals:

1. Ms. Lisha Adams, Executive Deputy to the Commanding General, U.S. Army Materiel Command, Redstone Arsenal, AL
2. Ms. Christina Altendorf, Chief, Engineering and Construction Division, U.S. Army Corps of Engineers, Washington, DC
3. Mr. Stephen Austin, Assistant Chief of the Army Reserve, Office of the Chief of Army Reserve, Washington, DC
4. Mr. Mark Averill, Deputy Administrative Assistant to the Secretary of the Army & Director Resources and Program Agency, Office of the Administrative Assistant to the Secretary of the Army, Washington, DC
5. Mr. Patrick Baker, Director, CCDC Army Research Laboratory, U.S. Army Combat Capabilities Development Command, Adelphi, MD
6. MG Christine A. Beeler, Commanding General, U.S. Army Contracting Command, U.S. Army Materiel Command, Redstone Arsenal, AL
7. Dr. David Bridges, Senior Research Scientist (Environmental Science), U.S. Army Corps of Engineers, Vicksburg, MS
8. Mr. William Brinkley, Deputy Chief of Staff, G–1/4 (Personnel and Logistics), U.S. Army Training and Doctrine Command, Fort Eustis, VA
9. LTG Gary Brito, Deputy Chief of Staff, Office of the Deputy Chief of Staff, G–1, Washington, DC
10. Ms. Kimberly Buehler, Director, Army Office of Small Business Programs, Office of the Secretary of the Army, Washington, DC
11. Ms. Carol Burton, Director, Civilian Human Resources Agency, Office of the Deputy Chief of Staff, G–1, Washington, DC
12. Mr. Douglas Bush, Principal Deputy Assistant Secretary of the Army (Acquisitions, Logistics and Technology), Washington, DC
13. LTG Christopher Cavoli, Commanding General, U.S. Army Europe, Wiesbaden, Germany
14. GEN Edward Daly, Commanding General, U.S. Army Materiel Command, Redstone Arsenal, AL
15. Mr. John Daniels, Deputy Assistant Secretary of the Army (Plans, Programs and Resources), Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology), Washington, DC
16. LTG Scott Dingle, The Surgeon General, Pentagon, Washington, DC
17. Ms. Karen Durham-Aguilera, Executive Director of the Army National Cemeteries Program, Office of the Secretary of the Army, Washington, DC
18. LTG Jason Evans, Deputy Chief of Staff, Office of the Deputy Chief of Staff, G–9, Washington, DC
19. Ms. Jeannette Evans-Morgis, Chief Systems Engineer, Office of the Assistant Secretary of the Army (Acquisitions, Logistics and Technology), Washington, DC
20. Dr. Elizabeth Fleming, Deputy Director, Engineer Research and Development Center, U.S. Army Corps of Engineers, Vicksburg, MS
21. Dr. Karl Friedl, Senior Research Scientist (Performance Physiology), U.S. Army Medical Command, Natick, MA
22. GEN Paul Funk, Commanding General, U.S. Army Training and Doctrine Command, Fort Eustis, VA

23. LTG Duane Gamble, Deputy Chief of Staff, Office of the Deputy Chief of Staff, G–4, Washington, DC
24. GEN Michael Garrett, Commanding General, U.S. Army Forces Command, Fort Bragg, NC
25. LTG Maria Gervais, Deputy Commanding General/Chief of Staff, U.S. Army Training and Doctrine Command, Fort Eustis, VA
26. Mr. Timothy Goddette, Deputy Assistant Secretary of the Army (Acquisition Policy and Logistics), Office of the Assistant Secretary of the Army (Acquisitions, Logistics and Technology), Washington, DC
27. Ms. Susan Goodyear, Deputy Chief Executive Officer, U.S. Army Futures Command, Austin, TX
28. Mr. Larry Gottardi, Director, Civilian Senior Leader Management Office, Washington, DC
29. MG William Graham, Deputy Commanding General for Civil and Emergency Operations, U.S. Army Corps of Engineers, Washington, DC
30. Mr. Thomas Greco, Deputy Chief of Staff for Intelligence, U.S. Army Training and Doctrine Command, Fort Eustis, VA
31. Mr. Ross Guckert, Program Executive Officer, Enterprise Information Systems, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology), Washington, DC
32. Mr. John Hall, Deputy to the Commanding General, U.S. Army Training and Doctrine Command, Fort Eustis, VA
33. MG Richard Heitkamp, Deputy Commanding General, U.S. Army Corps of Engineers, Washington, DC
34. Mr. Michael Hutchison, Deputy to the Commander, Surface Deployment and Distribution Command, U.S. Army Materiel Command, Scott Air Force Base, IL
35. Mr. James Johnson, Deputy to the Commander, U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Huntsville, AL
36. Mr. David Kim, Director of Support, U.S. Army Intelligence and Security Command, Fort Belvoir, VA
37. Ms. Krystyna Kolesar, Assistant Deputy Chief of Staff, Office of the Deputy Chief of Staff, G–8, Washington, DC
38. Mr. Daniel Klippstein, Assistant Deputy Chief of Staff, Office of the Deputy Chief of Staff, G–9, Washington, DC
39. Mr. Michael Lacey, Deputy General Counsel (Operations and Personnel), Office of the General Counsel, Washington, DC
40. Mr. Jeffrey Langhout, Director, CCDC Ground Vehicle Systems Center, Combat Capabilities Development Command, U.S. Army Futures Command, Warren, MI
41. Mr. Alvin Lee, Director of Civil Works, U.S. Army Corps of Engineers, Washington, DC
42. Mr. Mark Lewis, Deputy to the Assistant Secretary, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), Washington, DC
43. Mr. Stephen Loftus, Deputy Assistant Secretary of the Army (Cost and Economics), Office of the Assistant Secretary of the Army (Financial Management & Comptroller), Washington, DC
44. Mr. Christopher Lowman, Assistant Deputy Chief of Staff, Office of the Deputy Chief of Staff, G–4, Washington, DC
45. Mr. Michael Mahoney, Deputy Assistant Secretary of the Army (Army Review Boards), Arlington, VA
46. LTG Robert Marion, Principal Military Deputy, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology), Washington, DC
47. Dr. David Markowitz, Chief Data Officer & Analytics Officer, Office of the Deputy Chief of Staff, G–8, Washington, DC
48. Mr. David May, Senior Cyber Intelligence Advisor, U.S. Army Training and Doctrine Command, Fort Gordon, GA
49. MG Jeffrey Milhorn, Deputy Commanding General for Military and International Operations, U.S. Army Corps of Engineers, Washington, DC
50. Dr. Eric Moore, Director, Chemical and Biological Center, Combat Capabilities Development Command, U.S. Army Futures Command, Aberdeen Proving Ground, MD
51. Mr. Harry Mornston, Director, Intelligence and Security Directorate, U.S. Army Futures Command, Austin, TX
52. LTG John Morrison, Jr., Deputy Chief of Staff, Office of the Deputy Chief of Staff, G–6, Washington, DC
53. Mr. Larry Muzzelo, Deputy to the Commanding General, U.S. Army Communications-Electronics Command, U.S. Army Materiel Command, Aberdeen Proving Ground, MD
54. Mr. Levator Norsworthy, Jr., Deputy General Counsel (Acquisition), Office of the General Counsel, Washington, DC
55. Ms. Karen Pane, Director of Human Resources, U.S. Army Corps of Engineers, Washington, DC
56. LTG Eric Peterson, Deputy Chief of Staff, G–8, Pentagon, Washington, DC
57. LTG Walter E. Piatt, Director of the Army Staff, Pentagon, Washington, DC
58. Mr. Jamie A. Pinkham, Principle Deputy Assistant Secretary of the Army (Civil Works)
59. Dr. David Pittman, Director, Research and Development, U.S. Army Corps of Engineers, Vicksburg, MS
60. Mr. Ronald Pontius, Deputy to the Commanding General, U.S. Army Cyber Command, Fort Belvoir, VA
61. LTG Laura Potter, Deputy Chief of Staff, G–2, Washington, DC
62. LTG Leopoldo Quintas, Jr., Deputy Commanding General, U.S. Army Forces Command, Fort Bragg, NC
63. LTG James Rainey, Deputy Chief of Staff, Office of the Deputy Chief of Staff, G–3/5/7, Washington, DC
64. Ms. Diane Randon, Assistant Deputy Chief of Staff, Office of the Deputy Chief of Staff, G–2, Washington, DC
65. Dr. Peter Reynolds, Senior Research Scientist (Physical Sciences), Combat Capabilities Development Command, U.S. Army Futures Command, Durham, NC
66. Ms. Anne Richards, The Auditor General, U.S. Army Audit Agency, Fort Belvoir, VA
67. Mr. J. Randall Robinson, Executive Deputy to the Commanding General, U.S. Army Installation and Management Command, Fort Sam Houston, TX
68. Dr. Dawn Rosarius, Principal Assistant for Acquisition, U.S. Army Medical Command, Fort Detrick, MD
69. Dr. Robert Sadowski, Senior Research Scientist (Robotics), Combat Capabilities Development Command, U.S. Army Futures Command, Warren, MI
70. Mr. Meriwether Sale, Director of Operations, U.S. Army Intelligence and Security Command, Fort Belvoir, VA
71. Mr. Bryan Samson, Deputy to the Commanding General, U.S. Army Contracting Command, U.S. Army Materiel Command, Redstone Arsenal, AL
72. Ms. Karen Saunders, Program Executive Officer, (Simulation, Training and Instrumentation), U.S. Army Acquisition Support Center, Orlando, FL
73. Mr. Craig Schmauder, Deputy General Counsel (Installations, Environment and Civil Works), Office of the General Counsel, Washington, DC
74. Dr. Brian Smith, Senior Research Scientist (Radio Frequency Sensor),

Technology Development Directorate, Aviation and Missile Center, U.S. Army Combat Capabilities Development Command, Redstone Arsenal, AL
75. Ms. Lauri Snider, Senior Advisor (Counter Intelligence, Disclosure, and Security), Office of the Deputy Chief of Staff, G–2, Washington, DC
76. Ms. Caral Spangler, Assistant Secretary of the Army (Financial Management and Comptroller), Washington, DC
77. LTG Scott Spellman, Commanding General, U.S. Army Corps of Engineers, Washington, DC
78. Mr. Thomas Steffens, Director of Resource Management, U.S. Army Corps of Engineers, Washington, DC
79. Mr. Vance Stewart, Deputy Assistant Secretary of the Army (Management and Budget), Office of the Assistant Secretary of the Army (Civil Works), Washington, DC
80. Mr. John E. Surash, Deputy Assistant Secretary of the Army (Energy and Sustainability)
81. Mr. Robin Swan, Director, Office of Business Transformation, Washington, DC
82. Mr. Douglas Tamilio, Director, CCDC Soldier Center, U.S. Army Combat Capabilities Development Command, Natick, MA
83. Mr. Roy Wallace, Assistant Deputy Chief of Staff, Office of the Deputy Chief of Staff, G–1, Washington, DC
84. Mr. John S. Willison, Deputy to the Commanding General, Combat Capabilities Development Command, U.S. Army Futures Command, Aberdeen Proving Ground, MD
85. Ms. Kathryn Yurkanin, Principal Deputy Chief, Office of the Chief Legislative Liaison, Washington, DC

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2021–24586 Filed 11–9–21; 8:45 am]

BILLING CODE 5061–AP–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, pursuant to the Paperwork Reduction Act of 1995, a three-year extension to its collection of information titled: *Budget Justification,* OMB No. 1910–5162. The proposed collection will establish application consistency for numerous Grant and Cooperative Agreement application packages from potential and chosen recipients. This effort will also streamline processes and provide applicants with a clear and straightforward tool to assist with project budgeting. In addition it will endow DOE reviewers with adequate information to determine if proposed costs are allowable, allocable, and reasonable.

DATES: Comments regarding this continued information collection must be received on or before December 10, 2021. 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 DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4650.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to James Cash, U.S. Department of Energy, Golden Field Office, 15013 Denver West Parkway, Golden, CO 80401–3111, or by phone (240) 562–1456, or by email at *james.cash@ee.doe.gov.* The information collection instrument, titled ''Budget Justification'' may also be viewed at: *https://www.energy.gov/eere/funding/articles/eere-negotiation-forms.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1910–5162, Budget Justification;

(2) *Information Collection Request Title:* Budget Justification;

(3) *Type of Request:* Renewal;

(4) *Purpose:* This collection of information is necessary in order for DOE to identify allowable, allocable, and reasonable recipient project costs eligible for Grants and Cooperative Agreements under Energy Efficiency and Renewable Energy (EERE) programs;

(5) *Annual Estimated Number of Respondents:* 400;

(6) *Annual Estimated Number of Total Responses:* 400;

(7) *Annual Estimated Number of Burden Hours:* 24 hours, per response;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $1,417.20 per one time response;

Statutory Authority: Section 989(a) EPACT 2005 [Merit Review]{42 U.S.C. 16353(a)}; Section 646 DOE Organization Act [Contracts]{42 U.S.C. 7256(a)}; and 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management), 31 U.S.C. 1111 (Improving Economy and Efficiency of the United States Government), 41 U.S.C. 1101–1131 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and Executive Order 11541 (''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President''), the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507), as well as The Federal Program Information Act (Pub. L. 95–220 and Pub. L. 98–169, as amended, codified at 31 U.S.C. 6101–6106).

Signing Authority

This document of the Department of Energy was signed on November 5, 2021, by Derek G. Passarelli, Head of Contracting Activity and Director, Golden Field Office, Office of Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 5, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–24608 Filed 11–9–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

International Energy Agency Meetings

AGENCY: Department of Energy.

ACTION: Notice of meetings.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet on November 15–16, 18, 2021, through a webinar, in connection with a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM) which is scheduled at the same time.

DATES: November 15–16, 18, 2021.

ADDRESSES: The location details of the SEQ and SOM webinar meeting are under the control of the IEA Secretariat, located at 9 rue de la Fédération, 75015 Paris, France.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Reilly, Assistant General Counsel for International and National Security Programs, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–5000.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)) (EPCA), the following notice of meetings is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held as a webinar, commencing at 12 noon, Central European Time (CET), on November 16, 2021. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) and the IEA's Standing Group on the Oil Market (SOM), which is scheduled to be held via webinar at the same time. The IAB will also hold a preparatory meeting via webinar among company representatives at 15:00 CET on November 15, 2021. The agenda for this preparatory webinar meeting is to review the agenda for the SEQ meeting.

The location details of the SEQ webinar meeting are under the control of the IEA Secretariat, located at 9 rue de la Fédération, 75015 Paris, France. The agenda of the SEQ meeting is under the control of the SEQ and the SOM. It is expected that the SEQ and the SOM will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of Summary Record of meeting of 22 June 2021
3. Update on the Current Oil Market Situation followed by Q&A
4. Update on Coal, Gas and Electricity Markets followed by Q&A
5. Reports on Recent Oil Market and Policy Developments in IEA Countries.
6. The Outlook for the Economy and Impact of Higher Energy Prices followed by Q&A
7. Presentation: ''World Energy Outlook 2021'' followed by Q&A
8. Any other business:
   Date of next SEQ/SOM meetings: 15–17 March 2022
   Close of meeting

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held as a webinar, commencing at 12 noon, Central European Time (CET), on November 18, 2021. The purpose of this notice is to permit attendance by representatives of U.S. company members of the IAB at a joint meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held via webinar at the same time. The IAB will also hold a preparatory meeting via webinar among company representatives at 15:00 CET on November 15, 2021. The agenda for this preparatory webinar meeting is to review the agenda for the SEQ meeting. The location details of the SEQ webinar meeting are under the control of the IEA Secretariat, located at 9 rue de la Fédération, 75015 Paris, France. The agenda of the meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following agenda:

1. Adoption of the Agenda
2. Approval of the Summary Record of the 164th Meeting (webinar)
3. Status of Compliance with IEP Agreement Stockholding Obligations
4. Mid-term review US
5. ERR Belgium (tbc)
6. Industry Advisory Board Update
7. ERR of France
8. Oral Reports by Administrations
9. Any Other Business
   Schedule of ERRs for 2021/2022
   Schedule of SEQ & SOM Meetings for 2022:

—15–17 March 2022
—21–23 June 2022
—15–17 November 2022

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), the meetings of the IAB are open to representatives of members of the IAB and their counsel; representatives of members of the IEA's Standing Group on Emergency Questions and the IEA's Standing Group on the Oil Markets; representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of Congress, the IEA, and the European Commission; and invitees of the IAB, the SEQ, the SOM, or the IEA.

Signing Authority: This document of the Department of Energy was signed on November 4, 2021, by Thomas Reilly, Assistant General Counsel for International and National Security Programs, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, November 4, 2021.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2021–24557 Filed 11–9–21; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Ford County Wind Farm LLC	EG21–211–000
Quinebaug Solar, LLC	EG21–212–000
Borderlands Wind, LLC	EG21–213–000
Hecate Energy Johanna Facility LLC.	EG21–214–000
SR Perry, LLC	EG21–215–000
Caddo Wind, LLC	EG21–216–000
Delilah Solar Energy LLC	EG21–217–000
E. BarreCo Corp LLC	EG21–218–000
Lick Creek Solar, LLC	EG21–219–000
PGR 2021 Lessee 5, LLC	EG21–220–000
Montague Solar, LLC	EG21–221–000
Fairbanks Solar Holdings LLC	EG21–222–000
Fairbanks Solar Energy Center LLC.	EG21–223–000
PGR 2021 Lessee 7, LLC	EG21–224–000
Bat Cave Energy Storage, LLC	EG21–225–000
BRP Dickinson BESS LLC	EG21–226–000
BRP Pueblo I BESS, LLC	EG21–227–000
BRP Pueblo II BESS, LLC	EG21–228–000
BRP Zapata I BESS, LLC	EG21–229–000
BRP Zapata II BESS, LLC	EG21–230–000
BRP Loop 463 BESS LLC	EG21–231–000
BRP Lopeno BESS LLC	EG21–232–000
North Fork Energy Storage, LLC	EG21–233–000
Highest Power Solar, LLC	EG21–234–000
Mark One Generating, LLC	EG21–235–000
Sagebrush ESS, LLC	EG21–236–000

Take notice that during the month of October 2021, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2020).

Dated: November 4, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–24595 Filed 11–9–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3253–015]

Mad River Power Associates; Notice of Waiver Period for Water Quality Certification Application

On October 20, 2021, Mad River Power Associates submitted to the Federal Energy Regulatory Commission a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the New Hampshire Department of Environmental Services (New Hampshire DES), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6, we hereby notify the New Hampshire DES of the following:

Date of Receipt of the Certification Request: October 8, 2021.

Reasonable Period of Time to Act on the Certification Request: One year (October 8, 2022).

If New Hampshire DES fails or refuses to act on the water quality certification request on or before the above date, then the agency's certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: November 4, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–24590 Filed 11–9–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1971–134]

Idaho Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* P–1971–134.

c. *Date Filed:* October 8, 2021.

d. *Applicant:* Idaho Power Company (licensee).

e. *Name of Project:* Hells Canyon Hydroelectric Project.

f. *Location:* The project is located on the Snake River in Adams and Washington counties, Idaho and in Wallowa, Malheur, and Baker counties, Oregon. The project occupies federal lands administered by the U.S. Forest Service and the Bureau of Land Management. (Payette and Wallowa Whitman National Forests and Hells Canyon National Recreational Area.)

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. David Zayas, FERC Hydropower Coordinator, Idaho Power Company, 1221 W. Idaho Street, P.O. Box 70, Boise, ID 83702, (208) 388–2915, *DZayas@idahopower.com.*

i. *FERC Contact:* Jennifer Polardino, (202) 502–6437, *jennifer.polardino@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* December 6, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–1971–134. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* In response to the Commission's March 29, 2021 letter, the licensee proposes to add the Oxbow Fish Hatchery as a project feature to the existing license for the Hells Canyon Project. However, the licensee explained that the existing hatchery building has become increasingly difficult to maintain and/or repair, due in part to its age. The hatchery building also does not meet modern industry safety standards. As such, the licensee additionally requests to amend the project license to demolish the existing hatchery structures and construct a new and modern Oxbow Fish Hatchery in the same location. The licensee does not propose to modify hatchery operations or larger project operations.

l. *Location of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Documents: Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing

responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: November 4, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–24596 Filed 11–9–21; 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: PR21–57–001.
Applicants: Louisville Gas and Electric Company.
Description: Submits tariff filing per 284.123(b), (e)/: Amendment to Filing of Revised Statement of Operating Conditions to be effective 7/1/2021.
Filed Date: 11/2/21.
Accession Number: 20211102–5145.
Comments/Protests Due: 5 p.m. ET 11/23/21.

Docket Numbers: RP20–980–006.
Applicants: East Tennessee Natural Gas, LLC.
Description: East Tennessee Natural Gas, LLC submits tariff filing per 154.203: East Tennessee RP20–980 Compliance Filing to be effective 1/1/2021.
Filed Date: 11/01/2021.
Accession Number: 20211101–5034.
Comment Date: 5 p.m. 11/15/21.

Docket Numbers: RP22–183–000.
Applicants: Empire Pipeline, Inc.
Description: § 4(d) Rate Filing: Empire Housekeeping Filing—November 2021 to be effective 12/3/2021.
Filed Date: 11/3/21.
Accession Number: 20211103–5086.
Comment Date: 5 p.m. ET 11/15/21.

Docket Numbers: RP22–184–000.
Applicants: Enable Gas Transmission, LLC.
Description: Compliance filing: EGT–NAESB 3.2 Compliance Filing to be effective 6/1/2022.
Filed Date: 11/3/21.
Accession Number: 20211103–5099.
Comment Date: 5 p.m. ET 11/15/21.

Docket Numbers: RP22–185–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: Compliance filing: MRT–NAESB 3.2 Compliance Filing to be effective 6/1/2022.
Filed Date: 11/3/21.
Accession Number: 20211103–5102.
Comment Date: 5 p.m. ET 11/15/21.

Docket Numbers: RP22–186–000.
Applicants: Golden Pass Pipeline LLC.
Description: Compliance filing: Golden Pass Pipeline Revised Tariff Records Re: Order 587–Z to be effective 6/1/2022.
Filed Date: 11/3/21.
Accession Number: 20211103–5133
Comment Date: 5 p.m. ET 11/15/21.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP22–158–001.
Applicants: Rover Pipeline LLC.
Description: Compliance filing: Correction to RVR Cost & Revenue Study in Compliance with CP15–93–000 et al. to be effective N/A.
Filed Date: 11/3/21.
Accession Number: 20211103–5110.
Comment Date: 5 p.m. ET 11/15/21.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 4, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–24593 Filed 11–9–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–414–000; CP07–415–000; CP07–416–000]

Golden Triangle Storage, Inc.; Notice of Request for Extension of Time

Take notice that on October 29, 2021, Golden Triangle Storage, Inc. (GTS) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until December 31, 2024, in order to development of Storage Caverns 1 and 2 up to their maximum certificated storage capacities in Jefferson and Orange Counties, Texas. In a December 31, 2007 Order Issuing Certificates the Commission Approved the construction and operation of the GTS project (2007 Order) [1] The 2007 Order required Golden Triangle Storage, Inc to complete construction and make the facilities available for service within six years of the certificate order, that is, by December 13, 2013, pursuant to section 157.20(b) of the Commission's regulations.

In its October 29, 2021 request GTS had stated the 2007 Order recognized that after the caverns are placed in service, they will undergo additional solution mining to increase the working gas capacity of each cavern to its total certificated capacity. On October 15, 2013, GTS filed a request for an extension of time for an additional four years, until December 31, 2017, to complete the project.[2] On November 15, 2013, the Commission granted an extension of time until and including December 31, 2017, to complete construction of the facilities.[3] Due to the capacity of the leaching facilities, GTS states that it must alternate the solution mining of each cavern, thus GTS has requested by its August 29, 2017 letter an additional four year extension of time to complete the leaching of their storage caverns to their maximum certificated capacities.[4] The Commission, on November 1, 2017, granted an additional extension of time until and including December 31, 2021,

[1] Golden Triangle Storage, Inc., 121 FERC ¶ 61,313 (2007).

[2] Golden Triangle Storage, Inc., Docket Nos. CP07–414–000, et al., Request for Extension of Time filed October 15, 2013.

[3] Golden Triangle Storage, Inc., Docket Nos. CP07–414–000, et al., (unpublished delegated letter order issued November 15, 2013, granting request for extension of time).

[4] Golden Triangle Storage, Inc., Docket Nos. CP07–414–000, et al., Request for Extension of Time to Complete Construction of Jurisdictional Facilities filed August 29, 2017.

to complete construction of the facilities.[5]

Now on October 29, 2021 GTS requested an additional four-year extension of time to require additional rewatering cycles to reach its maximum certificated storage capacity cycle and recover any capacity lost to gradual creep since the most recent prior rewatering.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Golden Triangle Storage, Inc request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file 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 Natural Gas Act (18 CFR 157.10).[6]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[7] the Commission will aim to issue an order acting on the request within 45 days.[8] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[9] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[10] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[11] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on November 19, 2021.

Dated: November 4, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–24594 Filed 11–9–21; 8:45 am]

BILLING CODE 6717–01–P

[5] Golden Triangle Storage, Inc., Docket Nos. CP07–414–000, et al., (unpublished delegated letter order issued November 1, 2017, granting request for extension of time).

[6] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. Algonquin Gas Transmission, LLC, 170 FERC ¶ 61,144, at P 39 (2020).

[7] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[8] Algonquin Gas Transmission, LLC, 170 FERC ¶ 61,144, at P 40 (2020).

[9] *Id.* at P 40.

[10] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[11] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2793–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2021–11–04_Attachment X Deficiency Response for Pro forma MPFSA to be effective 12/31/9998.

Filed Date: 11/4/21.

Accession Number: 20211104–5119.

Comment Date: 5 p.m. ET 11/26/21.

Docket Numbers: ER21–2873–001.

Applicants: Alabama Power Company.

Description: Tariff Amendment: Supplement to Tri-State Solar Project Amended and Restated LGIA Filing to be effective 8/31/2021.

Filed Date: 11/4/21.

Accession Number: 20211104–5077.

Comment Date: 5 p.m. ET 11/26/21.

Docket Numbers: ER21–2884–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2021–11–04_SA 3438 Entergy Arkansas-Long Lake Solar Sub 1st Rev GIA (J663 J834) to be effective 9/8/2021.

Filed Date: 11/4/21.

Accession Number: 20211104–5071.

Comment Date: 5 p.m. ET 11/26/21.

Docket Numbers: ER22–109–001.

Applicants: Cheyenne Light, Fuel and Power Company.

Description: Tariff Amendment: Amendment Jurisdictional Agreement Filing to be effective 12/31/9998.

Filed Date: 11/3/21.

Accession Number: 20211103–5155.

Comment Date: 5 p.m. ET 11/24/21.

Docket Numbers: ER22–335–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2021–11–04_SA 3616 Entergy Louisiana-St. Jacques Solar 1st Rev GIA (J1076) to be effective 10/29/2021.

Filed Date: 11/4/21.

Accession Number: 20211104–5073.

Comment Date: 5 p.m. ET 11/26/21.

Docket Numbers: ER22–336–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3864 Seven Cowboy Wind Project Interim GIA to be effective 10/15/2021.

Filed Date: 11/4/21.

Accession Number: 20211104–5117.

Comment Date: 5 p.m. ET 11/26/21.

Docket Numbers: ER22–337–000.

Applicants: Bio Energy (Ohio II), LLC.

Description: Baseline eTariff Filing: Bio Energy (Ohio II), LLC FERC MBR Application to be effective 11/5/2021.

Filed Date: 11/4/21.

Accession Number: 20211104–5122.

Comment Date: 5 p.m. ET 11/26/21.

Docket Numbers: ER22–338–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement Nos. 344 and 345, Agreement with CSE and S&R to be effective 1/3/2022.

Filed Date: 11/4/21.

Accession Number: 20211104–5123.
Comment Date: 5 p.m. ET 11/26/21.

Docket Numbers: ER22–339–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: TVA NITSA Amendment (Add Raytheon DP) to be effective 10/5/2021.
Filed Date: 11/4/21.
Accession Number: 20211104–5128.
Comment Date: 5 p.m. ET 11/26/21.

Docket Numbers: ER22–340–000.
Applicants: Arizona Public Service Company.
Description: Tariff Amendment: Service Agreement No. 390—Notice of Cancellation to be effective 1/3/2022.
Filed Date: 11/4/21.
Accession Number: 20211104–5129.
Comment Date: 5 p.m. ET 11/26/21.

Docket Numbers: ER22–341–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Service Agreement No. 395 to be effective 1/3/2022.
Filed Date: 11/4/21.
Accession Number: 20211104–5132.
Comment Date: 5 p.m. ET 11/26/21.

Docket Numbers: ER22–342–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OATT, Att. Q re: Working Credit Limit Definition to be effective 1/4/2022.
Filed Date: 11/4/21.
Accession Number: 20211104–5164.
Comment Date: 5 p.m. ET 11/26/21.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: November 4, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–24592 Filed 11–9–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2618–037]

Woodland Pulp, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request to Amend Article 404, Operational and Compliance Monitoring Plan, and Impoundment Operation Consultation Plan.

b. *Project No:* 2618–037.

c. *Date Filed:* October 15, 2021.

d. *Applicant:* Woodland Pulp, LLC.

e. *Name of Project:* West Branch Storage Project.

f. *Location:* The project is located on the West Branch of the St. Croix River in Penobscot, Washington, and Hancock Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Scott Beal, Woodland Pulp, LLC, 144 Main Street, Baileyville, ME 04619, 207–427–4004.

i. *FERC Contact:* Michael Calloway, (202)–502–8041, *michael.calloway@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* December 4, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2618–037. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee is proposing to amend Article 404, the Operational and Compliance Monitoring Plan, and the Impoundment Operation Consultation Plan in order to reflect an update to the reservoir elevation gage reference datum which effects the readings of the reservoir (West Grand Lake) elevation. West Grand Lake's elevation is monitored using the U.S. Geological Survey Gage No. 01018900 West Grand Lake at Grand Lake Stream, Maine. The readout of the gage was changed when the gage's elevation datum was updated to NAVD88 datum from the NAD29 datum. The proposed amendment of Article 404 and the plans would not change the actual physical water elevation in West Grand Lake, the way it is operated, or the physical historic operational elevation bands. It would only update the values listed in Article 404 and the plans to reflect the revised readouts of Gage No. 01018900 in NAVD88 datum.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214,

respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: November 4, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–24585 Filed 11–9–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0198, FRL–8934–01–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Land Disposal Restrictions (Renewal), EPA ICR No. 1442.24, OMB Control No. 2050–0085

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), Land Disposal Restrictions (Renewal), (EPA ICR No. 1442.24, OMB Control No. 2050–0085) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through June 30, 2022. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 10, 2022.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0198, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0453; email address: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Docket Center is 202–566–1744.

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for hazardous waste treatment, storage, and disposal as may be necessary to protect human health and the environment. Subsections 3004(d), (e), and (g) require EPA to promulgate regulations that prohibit the land disposal of hazardous waste unless it meets specified treatment standards described in subsection 3004(m).

The regulations implementing these requirements are codified in the Code of Federal Regulations (CFR) title 40, part 268. EPA requires that facilities maintain the data outlined in this ICR so that the Agency can ensure that land disposed waste meets the treatment standards. EPA strongly believes that the recordkeeping requirements are necessary for the agency to fulfill its congressional mandate to protect human health and the environment.

Form Numbers: None.

Respondents/affected entities: Private sector and State, Local, or Tribal governments.

Respondent's obligation to respond: Mandatory (40 CFR part 268).

Estimated number of respondents: 79,096.

Frequency of response: On occasion.

Total estimated burden: 600,097 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $95,703,440 (per year), which includes $49,372,275 in annualized capital or operation & maintenance costs and $46,331,165 in annualized labor costs.

Changes in estimates: The burden hours are likely to stay substantially the same.

Dated: November 4, 2021.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2021–24573 Filed 11–9–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—9222–01–OA]

Notification of a Public Meetings of the Science Advisory Board Per- and Polyfluoroalkyl Substances (PFAS) Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces four public meetings of the SAB per- and polyfluoroalkyl substances (PFAS) Review Panel (PFAS Review Panel) to review EPA's Proposed Approaches to the Derivation of a Draft Maximum Contaminant Level Goal for Perfluorooctanoic Acid (PFOA) in Drinking Water; EPA's Proposed Approaches to the Derivation of a Draft Maximum Contaminant Level Goal for Perfluorooctanesulfonic Acid (PFOS) in Drinking Water; EPA's Analysis of Cardiovascular Disease Risk Reduction as a Result of Reduced PFOA and PFOS Exposure in Drinking Water; and EPA's Draft Framework for Estimating Noncancer Health Risks Associated with Mixtures of PFAS.

DATES: The public meetings of the Science Advisory Board PFAS Review Panel will be held on Thursday, December 16, 2021, from 12:00 noon to 5:00 p.m. (Eastern Time), Tuesday, January 4, 2022, from 12:00 noon to 5:00 p.m. (Eastern Time), Thursday, January 6, 2022, from 12:00 noon to 5:00 p.m. (Eastern Time), and Friday, January 7, 2022, from 11:00 a.m. to 4:00 p.m. (Eastern Time).

ADDRESSES: The meetings will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for details on how to access the meetings.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public meetings may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), via telephone/voice mail (202) 564–2059, or email at *shallal.suhair@epa.gov.* General information concerning the SAB can be found on the EPA website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB per- and polyfluoroalkyl substances (PFAS) Review Panel (PFAS Review Panel) will hold four public meetings to review and provide comments on the (1) the health effects data to inform the derivation of proposed Maximum Contaminant Level Goals (MCLG) for PFOA and PFOS; (2) the analysis of health risk reduction benefits of potential decreases in drinking water concentrations of PFOA and PFOS and (3) approaches to assess the cumulative risk among mixtures of PFAS.

Technical Contacts: Any technical questions concerning EPA's document titled, ''Proposed Approaches to the Derivation of a Draft Maximum Contaminant Level Goal for Perfluorooctanoic Acid in Drinking Water'' and ''Proposed Approaches to the Derivation of a Draft Maximum Contaminant Level Goal for Perfluorooctanesulfonic Acid in Drinking Water'' should be directed to Brittany Jacobs at *jacobs.brittany@epa.gov.* Any technical questions concerning EPA's document titled, ''Analysis of Cardiovascular Disease Risk Reduction as a Result of Reduced PFOA and PFOS Exposure in Drinking Water'' should be directed to Morgan McCabe at *mccabe.morgan@epa.gov.* Any technical questions concerning EPA's document titled, ''Draft Framework for Estimating Noncancer Health Risks Associated with Mixtures of PFAS'' should be directed to Colleen Flaherty (*flaherty.colleen@epa.gov*) and/or Jason Lambert (*lambert.jason@epa.gov*).

Availability of Meeting Materials: Prior to the meetings, the agenda and other meeting materials for each meeting will be placed on the SAB website at *https://sab.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB PFAS Review Panel will have the most impact if it provides specific scientific or technical information or analysis for the SAB PFAS Review Panel to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to three minutes. Persons interested in providing oral statements on December 16, 2021, should contact Dr. Sue Shallal, DFO, via email at the contact information noted above by December 9, 2021, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB RFT Review Panel members, statements should be received in the SAB Staff

Office by December 30, 2021, for consideration at the public meeting(s). Written statements should be supplied to the DFO via email at the contact information above. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Shallal at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

V Khanna Johnston,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2021–24565 Filed 11–9–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9084–01–OMS]

Privacy Act of 1974; Systems of Records; Amendment to General Routine Uses

AGENCY: Office of Mission Support, Environmental Protection Agency (EPA)

ACTION: Amendment to EPA's existing Privacy Act general routine uses.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Mission Support is giving notice that it proposes to amend its current list of general routine uses for EPA systems of records in accordance with the provisions of the Privacy Act of 1974, as amended. The amended list of routine uses is consistent with requirements in a memorandum issued by the Office of Management and Budget (OMB) on January 3, 2017 (Memorandum M–17–12 ''Preparing for and Responding to a Breach of Personally Identifiable Information''). OMB's memorandum requires that all Federal agencies publish two routine uses for their systems allowing for the disclosure of personally identifiable information to the appropriate parties in the course of responding to a breach or suspected breach of the agency's PII or to assist another agency in its response to a confirmed or suspected breach.

DATES: Persons wishing to comment on this routine use notice must do so by December 10, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2007–1144, by one of the following methods:

Federal eRulemaking Portal: www.regulations.gov: Follow the online instructions for submitting comments.

Email: docket_oms@epa.gov. Include the Docket ID number in the subject line of the message.

Fax: (202) 566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2007–1144. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *https://www.regulations.gov.* The *https://www.regulations.gov* website is an ''anonymous access'' system for the EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is normally 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 OMS Docket is (202) 566–1752.

Temporary Hours During COVID–19

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information about EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Agency Privacy Officer, MC 2831T, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; *privacy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

The Privacy Act of 1974, as amended, 5 U.S.C. 552a, governs the means by which the United States Government collects, maintains, and uses personally identifiable information (PII) in a system of records. A ''system of records'' is a group of any records under the control of a federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register**, for public notice and comment, a system of records notice (SORN) identifying and describing each system of records the agency maintains, including the purposes for which the

agency uses PII in the system and the routine uses for which the agency discloses such information outside the agency. As provided in OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' agencies may publish all routine uses applicable to a system of records in a single **Federal Register** Notice for that system. However, an agency may publish a separate notice of routine uses that are applicable to many systems of records at the agency and then incorporate them by reference into the notices for specific systems to which they apply. When incorporating such routine uses by reference, the agency shall ensure that the routine use section of the SORN clearly indicates which of the separately published routine uses apply to the system of records and includes the **Federal Register** citation where they have been published.

EPA has previously published twelve general routine uses (*see* 73 FR 2245, published January 14, 2008). The amended list of general routine uses included herein reflects a non-substantive change to an existing EPA general routine use (*see* 73 FR 2245, published January 14, 2008). The amended general routine uses implemented by this notice reflect the two pieces of the existing general routine use in two parts: (a) A general routine use for disclosure of records in response to a breach or suspected breach of EPA's systems of records and (b) a general routine use for disclosure of records in response to a breach or suspected breach of another agency's systems of records.

The amended general routine uses are compatible with the purposes for which the information to be disclosed under these general routine uses was originally collected. Individuals whose personally identifiable information is in EPA systems expect their information to be secured. Sharing their information with appropriate parties in the course of responding to a confirmed or suspected breach of an EPA system, or another agency's system, will help EPA and all Federal agencies protect them against potential misuse of their information by unauthorized persons. For the reasons above, the existing general routine use L is amended to reflect the guidance provided in OMB Memorandum M–17–12, reflected in new general routine uses L and M. Accordingly, the Agency's general routine uses are as follows:

A. Disclosure for Law Enforcement Purposes: Information may be disclosed to the appropriate Federal, State, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. Disclosure Incident to Requesting Information: Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested,) when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring,) retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

C. Disclosure to Requesting Agency: Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. Disclosure to Office of Management and Budget: Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

E. Disclosure to Congressional Offices: Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. Disclosure to Department of Justice: Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Agency is authorized to appear, when:

1. The Agency, or any component thereof;

2. Any employee of the Agency in his or her official capacity;

3. Any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency have agreed to represent the employee; or

4. The United States, if the Agency determines that litigation is likely to affect the Agency or any of its components,

Is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

G. Disclosure to the National Archives: Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others: Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints and Appeals: Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. Disclosure to the Office of Personnel Management: Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. Disclosure in Connection With Litigation: Information from this system of records may be disclosed in connection with litigation or settlement

discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

L. Disclosure to Persons or Entities in Response to an Actual or Suspected Breach of Personally Identifiable Information: To appropriate agencies, entities, and persons when (1) EPA suspects or has confirmed that there has been a breach of the system of records; (2) EPA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, EPA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with EPA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

M. Disclosure to Assist Another Agency in Its Efforts to Respond to a Breach of Personally Identifiable Information: To another Federal agency or Federal entity, when EPA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

HISTORY: 73 FR 2245 (January 14, 2008).

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2021–24599 Filed 11–9–21; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0105, FRL–9087–01–OLEM]

Proposed Information Collection Request; Comment Request; Information Collection Request Submitted to OMB for Review and Approval; Implementation of the Oil Pollution Act Facility Response Plan Requirements (Renewal), EPA ICR No. 1630.13, OMB Control No. 2050–0135

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Oil Pollution Act Facility Response Plans (Renewal) (EPA ICR No. 1630.13, OMB Control No. 2050–0135) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described in **SUPPLEMENTARY INFORMATION**. This is a proposed extension of the ICR, which is currently approved through July 31, 2022. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 10, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0105, to: (1) EPA online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submissions@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Proprietary Business Information (PBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: J. Troy Swackhammer, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–1966; email address: *swackhammer.j-troy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room is closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone and webform. For further information about the EPA's public docket, Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Docket Center is 202–566–1744.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The authority for EPA's facility response plan (FRP) requirements is derived from section 311(j)(5) of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR 112.20 and 112.21 and related appendices. The owner or operator of a facility subject to 40 CFR 112.20 must prepare and submit an FRP to EPA based on the following applicability criteria: (1) The facility transfers oil over water to or from a vessel and has a total

storage capacity of greater than or equal to 42,000 gallons; or (2) the facility's total oil storage capacity is greater than or equal to one million gallons and one or more of the following harm factors are met: Insufficient secondary containment for aboveground storage tanks at the facility; a discharge of oil could cause injury to fish and wildlife and sensitive environments; a discharge of oil could shut down a drinking water intake; the facility has experienced a reportable oil discharge of 10,000 gallons or more in the last 5 years; or other factors considered by the Regional Administrator (see 40 CFR 112.20(a)(2), (b)(1), (f)(1) and (f)(2) for further information).

The purpose of an FRP is to help an owner or operator identify the necessary resources to respond to an oil discharge in a timely manner. If implemented effectively, the FRP will reduce the impact and severity of oil discharges and may prevent discharges because of the identification of risks at the facility. Although the owner or operator is the primary data user, EPA also uses the data in certain situations to ensure that facilities comply with the regulation and to help allocate response resources. State and local governments may use the data, which are not generally available elsewhere, and can greatly assist local emergency preparedness planning efforts. The EPA reviews all submitted FRPs and must approve FRPs for those facilities whose discharges may cause significant and substantial harm to the environment to ensure that facilities believed to pose the highest risk have planned for adequate resources and procedures to respond to oil discharges (See 40 CFR 112.20(f)(3) for further information about the criteria for significant and substantial harm.). No information collected under the FRP rule is expected to be confidential. One of the criteria necessary for information to be classified as ''proprietary business information'' (40 CFR 2.208) is that a business must show that it has previously taken reasonable measures to protect the confidentiality of the information and that it intends to continue to take such measures. EPA provides no assurances of confidentiality to facility owners or operators when they file their FRPs.

The burden estimates, numbers and types of respondents, wage rates and unit and total costs for this ICR renewal will be revised and updated, if needed, during the 60-day comment period while the ICR Supporting Statement is undergoing review at OMB.

Form Numbers: None.

Respondents/affected entities: Owners or operators of facilities required to have Spill Prevention, Control, and Countermeasure (SPCC) plans under the Oil Pollution Prevention regulation (40 CFR part 112) and that, because of their location, could reasonably be expected to cause substantial harm to the environment.

Respondent's obligation to respond: Mandatory under section 311(j)(5) of the Clean Water Act, as amended by the Oil Pollution Act of 1990.

Estimated number of respondents: 16,027 (total).

Frequency of response: Annual.

Total estimated burden: 385,784 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $17,728,836 (per year), includes $3,355 annualized capital or operation and maintenance costs.

Changes in Estimates: Total estimated costs reflect U.S. Bureau of Labor Statistics labor rates as of May 2020. This estimate is based on EPA's current inventory of facilities that have submitted and are maintaining an FRP. Any change in burden or cost resulting from the 60-day OMB review period will be described and explained in this section when the updated ICR Supporting Statement is completed.

Dated: October 28, 2021.

Donna Salyer,

Director, Office of Emergency Management.

[FR Doc. 2021–24555 Filed 11–9–21; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

AGENCY: Farm Credit Administration Board, Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. Sec. 552b(e) (1)), of the forthcoming regular meeting of the Farm Credit Administration Board.

DATES: The regular meeting of the Board will be held November 18, 2021, from 9:00 a.m. until such time as the Board may conclude its business. *Note: Because of the COVID–19 pandemic, we will conduct the board meeting virtually. If you would like to observe the open portion of the virtual meeting, see instructions below for board meeting visitors.*

ADDRESSES: To observe the open portion of the virtual meeting, go to *FCA.gov*, select ''Newsroom,'' then ''Events.'' There you will find a description of the meeting and a link to ''Instructions for board meeting visitors.'' See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Ashley Waldron, Secretary to the Farm Credit Administration Board (703) 883–4009. TTY is (703) 883–4056.

SUPPLEMENTARY INFORMATION: Instructions for attending the virtual meeting: This meeting of the Board will be open to the public, and parts will be closed. If you wish to observe, at least 24 hours before the meeting, go to *FCA.gov*, select ''Newsroom,'' then ''Events.'' There you will find a description of the meeting and a link to ''Instructions for board meeting visitors.'' If you need assistance for accessibility reasons or if you have any questions, contact Ashley Waldron, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are as follows:

Open Session

Approval of Minutes

- October 14, 2021

Report

- Merger Application Status Update

New Business

- Bookletter; Sound Governance of Wholesale Funding and Related Processes
- FCS Building Association 2022 Budget

Dated: November 8, 2021.

Ashley Waldron,

Secretary, Farm Credit Administration Board.

[FR Doc. 2021–24639 Filed 11–8–21; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0072]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (OMB Control No. 3064–0072).

DATES: Comments must be submitted on or before January 10, 2022.

ADDRESSES: Interested parties are invited to submit written comments to

the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to revise and extend the following currently approved collection of information:

1. *Title:* Acquisition Services Information Requirements.

OMB Number: 3064–0072.

Form Number: None.

Affected Public: Private sector, business and other for-profit entities.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN (OMB NO. 3064–0072)

	Type of burden	Obligation to respond	Number of respondents	Responses per respondent	Time per response	Frequency of response	Total annual estimated burden
Request for Proposal and Price Quotation (includes Basic Safeguards)—Solicitation/Award (Form 3700/55).	Reporting	Required to Obtain or Retain Benefits.	634	1	8.96	On Occasion	5,681
Request for Information	Reporting	Voluntary	107	1	58.74	On Occasion	6,285
Background Investigation Questionnaire for Contractor Personnel and Subcontractors (Form 1600/04).	Reporting	Required to Obtain or Retain Benefits.	185	1	0.33	On Occasion	61
Background Investigation Questionnaire for Contractors (Form 1600/07).	Reporting	Required to Obtain or Retain Benefits.	120	1	0.5	On Occasion	60
Background Investigation Questionnaire for Contractors (Form 1600/10).	Reporting	Required to Obtain or Retain Benefits.	185	1	0.17	On Occasion	31
Leasing Representations and Certifications (Form 3700/44).	Reporting	Required to Obtain or Retain Benefits.	15	1	1	On Occasion	15
Past Performance Questionnaire (Form 3700/57).	Reporting	Required to Obtain or Retain Benefits.	400	1	0.75	On Occasion	300
Contractor Representations and Certifications (Form 3700/04A).	Reporting	Required to Obtain or Retain Benefits.	1	1	0.67	On Occasion	1
Integrity and Fitness Representations and Certifications (Form 3700/12).	Reporting	Required to Obtain or Retain Benefits.	1	1	0.33	On Occasion	1
Prize Competitions—Application	Reporting	Required to Obtain or Retain Benefits.	100	1	1	On Occasion	100
Prize Competitions—Proposal	Reporting	Required to Obtain or Retain Benefits.	5	1	60	On Occasion	300
Innovation Pilot Programs—Application	Reporting	Required to Obtain or Retain Benefits.	150	1	20	On Occasion	3,000
Innovation Pilot Programs—Proposal	Reporting	Required to Obtain or Retain Benefits.	90	1	60	On Occasion	5,400
Total Hourly Burden							21,235

General Description of Collection: This information collection involves the submission of various forms by (1) contractors who wish to do business with the FDIC or are currently under contract with the FDIC; (2) those vendors and parties participating in innovation pilot programs and prize competitions with the possibility of being awarded a contract; and (3) government agencies or commercial businesses that provide FDIC with past performance information. There is no change in the method or substance of the collection. However, the FDIC has amended this submission to account for the burdens associated with vendors and parties participating in innovation pilot programs and prize competitions.

The Federal Deposit Insurance Act (12 U.S.C. Section 1819) empowers the FDIC to enter into contracts using private sector contractors to provide goods or services. The Act also provides that the FDIC may promulgate policies and procedures to administer the powers granted to it, including the power to enter into contracts. Pursuant to such policies, the Acquisition and Corporate Services Branch of the FDIC's Division of Administration has developed forms and clauses to facilitate the procurement of goods and services from private sector contractors. The information collected through these forms and clauses fall under the definition of collection of information under the Paperwork Reduction Act of 1995 (PRA).

During the review of the renewal of this Acquisition Services Information Requirements information collection, FDIC determined that portions of the PRA burdens that are currently under the information collection entitled *Innovation Pilot Programs. (OMB No. 3064–0212)* should be transferred to this information collection (OMB No. 3064–0072). OMB No. 3064–0212 involves the collection of information from third parties (banks and firms in partnership with banks) who are invited to voluntarily propose time-limited pilot programs, which will be collected and considered by the FDIC on a case-by-case basis. FDIC has determined that the burdens associated with OMB No. 3064–0212 that contain the possibility of entering into a contract with the FDIC should be transferred to OMB No. 3064–0072. To avoid duplication of burden hours, OMB No. 3064–0212 will be separately amended to only contain the burden on IDIs and third parties that are involved in the various projects that third parties may engage in. FDIC

determined that OMB No. 3064–0072 should include the burden involved with the preparation and submission of applications to participate in FDIC-sponsored or co-sponsored prize competitions if the outcome of those prize competitions includes the possibility of entering into a contract with the FDIC. These burdens are similar to the burdens currently under the IC entitled *Generic Clearance for Prize Competition Participation* (OMB No. 3064–0211). However, OMB No. 3064–0211 contains and will continue to contain those burdens associated with prize competitions whose outcomes do not include the possibility of a entering into a contract with the FDIC.

New Burden: Prize Competitions—Estimated Number of Respondents, Responses and Hourly Burdens

As described above, this ICR adds to OMB No. 3064–0072 the burdens involved with the preparation and submission of applications to participate in FDIC-sponsored or co-sponsored prize competitions if the outcomes of those prize competitions include the possibility of entering into a contract with the FDIC. The information associated with this burden are collected from potential and actual participants (including technologists, coders, engineers and developers; consumers of financial services; consumer advocates; academics; members of trade groups and other associations; individuals connected to financial institutions, community banks, and financial and bank service and technology providers; software, data, and technology firms; and other members of the public) of those prize competitions. The FDIC collects information from respondents during both an application phase and during a proposal phase.

1. *Application Phase:* The FDIC has never conducted a prize competition where outcomes included the possibility of entering into a contract with the FDIC. FDIC anticipates that approximately 100 applications would be received if the FDIC were to initiate such a prize competition. For the purposes of this ICR, FDIC assumes that each application is submitted by a distinct respondent. Thus, in the above burden table, for the line item Prize Competition—Application, FDIC assumes that the number of responses per respondent is one and use a respondent count of 100 per year.

In order for the FDIC to determine which applicants will be eligible and selected to participate in FDIC prize competitions, the FDIC will request that potential participants provide their name, contact information, address, and such other information that may be necessary to evaluate applicants' qualifications and ability to participate in the event as well as to match the applicants' anticipated role to the needs of the competition. Applicants will also be asked to acknowledge the terms and conditions of participating in the prize competition. Based on their experience with previous prize competitions, FDIC estimates that respondents will spend, on average, one hour to prepare and submit an application.

2. *Proposal Phase:* Certain participants in these prize competitions may be invited to present a contract proposal to be considered by the FDIC. Should such a prize competition occur, FDIC assumes that it would receive five contract proposals per year. For the purposes of this ICR, FDIC assumes that each proposal is submitted by a distinct respondent. Thus, for the line item Prize Competition—Proposal, FDIC assumes that the number of responses per respondent is one and use a respondent count of five per year.

Based on experience with previous prize competitions, FDIC expects that respondents will spend, on average, 60 hours to prepare and submit a proposal. Thus, for the line item Prize Competition—Proposal, FDIC estimates a time burden of 60 hours per response.

Transferred Burden From OMB No. 3064–0212: Innovation Pilot Program—Estimated Number of Respondents, Responses and Hourly Burdens

As described above, this ICR transfers the burdens that contain the possibility of entering into a contract with the FDIC from OMB No. 3064–0212 to OMB No. 3064–0072. The information associated with this burden are collected from innovators who are invited to voluntarily propose time-limited pilot programs. The program is typically conducted in four phases, with a declining number of companies advancing at each phase. The FDIC provides fixed monetary awards for the successful completion of some of these phases. In order to evaluate potential contractors, the FDIC collects information from respondents twice: During an application phase and during a proposal phase.

1. Application Phase: The FDIC issues a call for concept papers as a general solicitation. Interested parties respond by submitting concept papers, thus becoming offerors. The FDIC then subjectively assesses those papers to determine its confidence in the prospective merits of those concept papers as well as the FDIC's confidence in the offeror's apparent ability to transform concepts into real-world solutions. FDIC used its experience with the first Innovation Pilot Program [1] to estimate that 50 concept papers are submitted to the FDIC in response to a call. Although one company could submit multiple concept papers to one call, or different concept papers to different calls, the FDIC considers a concept paper submission for each call to be from a distinct respondent. The FDIC anticipates issuing three calls per year. Thus, for purposes of this information collection item, FDIC estimates 150 respondents per year and one response per respondent per year.

FDIC believes that the hourly burden for preparing concept papers to be similar to that of RFPs. However, the applications for pilot programs are usually more extensive than the average RFP. Based on the hourly burden estimated for RFPs, FDIC estimates that each application will take 20 hours to prepare and submit. Thus, for the line item Innovation Pilot Program—Application, FDIC estimates a time burden of 20 hours per response.

2. Proposal Phase: During a pilot program, all contractors who are participating will provide an initial summary of the terms and conditions (including price, deliverables, intellectual property rights, and so forth) it contemplates proposing for a follow-on pilot. The FDIC may provide feedback to the contractor and contractors may resubmit their proposal one or more times based on feedback received. Based on their experience with rapid Phase Prototyping (RPP), FDIC estimates that approximately 60 percent of applications received in response to calls for concept papers, or 90 applications per year,[2] will be invited to submit contract proposal. As above, the FDIC assumes each response to be from a distinct respondent. Thus, for the line item Innovation Pilot Program—Proposal, FDIC estimates 90 respondents per year and one response per respondent per year.

FDIC believes that, given the iterative nature of the RPP process, it is likely

[1] The first Innovation Pilot Program, Rapid Phased Prototyping (RPP), began in August 2020. Details for RPP can be found at *https://www.fdic.gov/fditech/rpp.html* (last accessed September 30, 2021). The proposal submission phase for RPP is expected to finish in 2021. The FDIC received 35 applications for RPP; FDIC conservatively estimates 50 responses per pilot program to account for the fact that future collections could receive increased interest. The FDIC also anticipates holding up to three pilots a year, for a total of 150 estimated applications per year.

[2] 90 contract proposals = 50 application per call * 3 calls per year * 60%.

that contractors will go through multiple iterations of contract proposals. FDIC assumes that each respondent will have to revise their submission twice, on average. In addition, these contract proposals include pricing, terms, and conditions, which will require more time than the concept papers. Given these differences, FDIC estimates that each response to an Innovation Pilot Program—Proposal will take 60 hours to prepare and submit.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 5, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–24553 Filed 11–9–21; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 86 FR 60816.

PREVIOUSLY ANNOUNCED TIME, DATE, AND PLACE OF THE MEETING: Wednesday, November 10, 2021 at 10:00 a.m., virtual meeting.

CHANGES IN THE MEETING: The Open Meeting will begin at 1:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2021–24759 Filed 11–8–21; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**. Copies of agreement are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201375.

Title: Hoegh Autolines/Liberty Global Logistics LLC Space Charter Agreement.

Parties: Hoegh Autoliners AS and Liberty Global Logistics LLC.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The agreement authorizes the parties to charter space to/from one another on an ''as needed/as available'' basis between the U.S. and all foreign countries.

Proposed Effective Date: 12/13/2021.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/53502.

Dated: November 5, 2021.

Rachel E. Dickon,

Secretary.

[FR Doc. 2021–24564 Filed 11–9–21; 8:45 am]

BILLING CODE 6730–02–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 (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 applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than November 26, 2021.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Carrie L. Brown, Timothy J. Brown CFC Revocable Trust, Timothy J. Brown, as trustee, CFC Control Trust, and Nick Brown, as trustee, all of Storm Lake, Iowa; Joleen M. Brown, John C. Brown CFC Revocable Trust, John C. Brown, as trustee, John C. Brown 2020 DGT Exempt Trust, Paul Brown, as trustee, Joleen M. Brown 2021 DGT Exempt Trust, and Paul Brown, as trustee, all of Spirit Lake, Iowa;* to become members of the Brown Family Control Group, a group acting in concert, to acquire voting shares of Commercial Financial Corp., and thereby indirectly acquire voting shares of Central Bank, both of Storm Lake, Iowa.

Board of Governors of the Federal Reserve System, November 5, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–24575 Filed 11–9–21; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 211 0013]

In the Matter of DaVita, Inc. and Total Renal Care, Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 10, 2021.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write: ''In the Matter of DaVita, Inc. and Total Renal Care, Inc.; File No. 211 0013'' on your comment, and file your comment online at *www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Stuart Hirschfeld (206–220–4484) and Danica Noble (206–220–5006), Northwest Regional Office, Federal Trade Commission, 915 2nd Avenue, Seattle, WA 98104.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis of Agreement Containing Consent Orders to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC website at this web address: *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 10, 2021. Write ''In the Matter of DaVita, Inc. and Total Renal Care, Inc.; File No. 211 0013'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *www.regulations.gov* website.

Due to protective actions in response to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *www.regulations.gov* website.

If you prefer to file your comment on paper, write ''In the Matter of DaVita, Inc. and Total Renal Care, Inc.; File No. 211 0013'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on *www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *https://www.ftc.gov* to read this Notice and the news release describing this matter. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before December 10, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') with DaVita, Inc., through its wholly-owned subsidiary, Total Renal Care, Inc. (''DaVita''). The proposed Consent Agreement is intended to remedy the anticompetitive effects that would likely result from DaVita's proposed acquisition (''Proposed Acquisition'') of all dialysis clinics owed by the University of Utah (''University'').

Pursuant to an Asset Purchase Agreement dated September 22, 2021, DaVita proposes to acquire all 18 dialysis clinics from the University in a non-HSR-reportable transaction. DaVita is the largest provider of dialysis services in the United States and the University is an academic and public research institution in the State of Utah. The 18 dialysis clinics extend from the southeast corner of Nevada to the southern part of Idaho. The Commission alleges in its Complaint that the Proposed Acquisition if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, by reducing competition and increasing concentration in outpatient dialysis services provided in the Provo, Utah market.

The proposed Consent Agreement will remedy the alleged violations by preserving competition that would otherwise be eliminated by the Proposed Acquisition. Under the terms of the Consent Agreement, DaVita is

required to divest three dialysis clinics to Sanderling Renal Services, Inc., (''SRS'') and must provide SRS with transition services for one year. In addition, DaVita cannot: (1) Enter into, or enforce, any non-compete agreements with physicians employed by the University that would restrict their ability to work at a clinic operated by a competitor of DaVita (except to prevent a medical director under a contract with DaVita from simultaneously serving as a medical director at a clinic operated by a competitor); (2) enter into any agreement that restricts SRS from soliciting DaVita's employees for hire; or (3) directly solicit patients who receive services from the divested clinics for two years. Finally, DaVita is required to receive prior approval from the Commission before acquiring any new ownership interest in a dialysis clinic in Utah.

II. The Relevant Market and Competitive Effects

The Commission's Complaint alleges the relevant line of commerce is the provision of outpatient dialysis services. Patients receiving dialysis services have end stage renal disease (''ESRD''), a chronic disease characterized by a near total loss of function of the kidneys and fatal if not treated. Many ESRD patients have no alternative to outpatient dialysis treatment because they are not viable home dialysis or transplant candidates (or they are waiting for a transplant for multiple years, during which time they must still receive dialysis treatment). Treatments are usually performed three times per week for sessions lasting between three and four hours. According to the United States Renal Data System, there were over 555,000 ESRD dialysis patients in the United States in 2018.

The Commission's Complaint also alleges the relevant geographic market in which to assess the competitive effects of the Proposed Acquisition is the greater Provo, Utah area. Specifically, the market is centered on Provo, Utah and extends north to Orem, Utah and south to Payson, Utah. The market is defined by the distance ESRD patients will travel to receive reoccurring treatments. Because ESRD patients are often suffering from multiple health problems and may require assistance traveling to and from the dialysis clinic, patients cannot travel long distances to receive treatment. Accordingly, most patients are unwilling or unable to travel more than 30 minutes or 30 miles for treatment, although travel times and distances may vary by location.

Dialysis providers seek to attract patients by competing on quality of services. To some extent, the providers also compete on price. Although Medicare eventually will cover all ESRD patients' dialysis costs, there is a 30-month transition period where commercially insured patients' costs are covered by their insurers, which compensate the providers at competitively negotiated rates.

In the greater Provo market, there are only three providers: The University (which has three clinics), DaVita (four clinics) and Fresenius Medical Care (one clinic). Therefore, the University and DaVita directly and substantially compete in the relevant market as the two largest providers, and DaVita would own seven of the eight clinics in the region. The Proposed Acquisition would eliminate competition between DaVita and The University in the relevant market for outpatient dialysis services, increasing the ability to unilaterally raise prices to third-party payers and decreasing the incentive to improve the quality of services provided to patients.

III. Entry

Entry into the outpatient dialysis services market in the greater Provo, Utah area would not be likely, timely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the Proposed Acquisition. The most significant barrier to entry is contracting a nephrologist with an established referral base to serve as the clinic's medical director. The Department of Health and Human Services requires each dialysis clinic have a nephrologist as a medical director. Locating a nephrologist is difficult because clinics typically enter into exclusive contractual arrangements with a nephrologist who is paid a medical director fee. Finding patients may also be difficult if the nephrologist does not have local ties, as most nephrologists typically refer their patients to the clinic where they serve as medical director. Moreover, the area itself must have a low penetration of dialysis clinics and a high ratio of commercial to Medicare patients to attract entry.

IV. The Agreement Containing Consent Order

Section II of the Proposed Order requires that DaVita divest the three University clinics in the greater Provo market to SRS, including all of the assets necessary for SRS to independently and successfully operate the clinics, which include, among other things, all leases for real property, all medical director contracts, and a license for each clinics' policies and procedures.

Section IV of the Proposed Order requires that DaVita provide transition services to SRS for up to one year, and Section V requires DaVita to provide assistance to SRS in hiring the employees at the divested clinics and to refrain from soliciting those employees for 180 days. In addition, Section V prohibits DaVita from entering into or enforcing non-compete agreements with any University nephrologist, except to prevent a medical director under a contract with DaVita from simultaneously serving as a medical director at a clinic operated by a competitor. Section V also prohibits DaVita from entering into any non-solicitation agreement with SRS that would prevent SRS from soliciting DaVita's employees for hire.

Section VI of the Proposed Order, along with the Order to Maintain Assets, requires that DaVita take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the divested clinics and their assets. Section VIII provides for the appointment of a Monitor to oversee the divestiture.

Section X of the Proposed Order requires DaVita to obtain prior approval from the Commission for any future acquisition of any ownership interests in any dialysis clinic in Utah. With regard to transactions involving clinics in multiple states, such prior approval only applies to the clinics in Utah.

The Commission does not intend this analysis to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

Concurring Statement of Commissioner Christine S. Wilson

Today, the Commission announces a consent order to settle allegations that the proposed acquisition of the dialysis business of the University of Utah Health (''University'') by Total Renal Care, Inc., a wholly-owned subsidiary of DaVita Inc. (''DaVita''), may substantially lessen competition in the market for outpatient dialysis services in the greater Provo, Utah area. I support the outcome but believe two aspects of the consent order warrant discussion so that my support is not misconstrued. Those two sets of provisions relate to prior approval and non-compete agreements. I then highlight a third provision—a ban on no-poach agreements—in light of the ongoing dialogue regarding whether antitrust

enforcement adequately protects competition for labor inputs.

Prior Approval and Non-Compete Agreement Provisions

First, DaVita is required to receive prior approval from the Commission before acquiring any new ownership interest in a dialysis clinic in Utah. The Commission rescinded the 1995 Policy Statement Concerning Prior Approval and Prior Notice (''1995 Policy'') on July 21, 2021. I dissented from this rescission for three reasons: The 1995 Policy was put in place to prevent resource-intensive and vindictive litigation; it preserved the use of prior approval provisions in appropriate circumstances; and the majority did not provide new guidance explaining how these provisions would be used following rescission of the 1995 Policy.[1]

Because I believe the 1995 Policy provided sound guidance on the appropriate use of prior approval provisions, I will assess the propriety of the prior approval provision in this matter against that touchstone. The 1995 Policy noted prior approval is most likely appropriate where there is a credible risk a company engaged in an anticompetitive merger would attempt the same or approximately the same merger in the future.[2] DaVita has engaged in a pattern of acquiring independent dialysis facilities; [3] many of these acquisitions fall below HSR thresholds and consequently escape premerger review,[4] including this proposed acquisition. There is some evidence this pattern of sub-HSR acquisitions has led to higher prices and lower service levels in the dialysis field.[5] For this reason, I have encouraged the Commission on previous occasions to study this industry.[6]

Against this backdrop, a prior approval provision is appropriate here. Specifically, there is a credible risk DaVita will attempt to acquire additional dialysis facilities in the same general area in which divestiture has been ordered. But to be clear, my vote in favor of this consent should not be construed as support for the liberal use of prior approval provisions foreshadowed by the Commission's majority when it rescinded the 1995 Policy.

Second, the order contains provisions that prohibit DaVita from enforcing non-compete agreements in the University of Utah nephrologists' medical director contracts.[7] Some commentators have suggested non-compete provisions should be banned, and some of my current and former colleagues on the Commission have expressed sympathy for that view.[8]

While I disagree with that perspective,[9] I have concluded the provisions limiting the effect of non-competes in this matter are necessary to achieve an effective remedy. Specifically, the operations of a dialysis facility must occur under the auspices of a nephrologist; indeed, without a nephrologist, a dialysis clinic cannot operate. Nephrologists are in short supply,[10] and the inability of a facility owner to retain or replace a licensed nephrologist could serve as a barrier to entry or, in this case, preclude the buyer from continuing to compete in the market. Moreover, a repeal of non-competes to effectuate a remedy is not novel; past consent orders have included provisions that prohibit merging parties from enforcing non-competes to aid divestiture buyers in hiring employees.[11] For these reasons, I

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[1] Oral Remarks of Commissioner Christine S. Wilson, Open Commission Meeting on July 21, 2021 at 8–11 (July 21, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1592366/commissioner_christine_s_wilson_oral_remarks_at_open_comm_mtg_final.pdf. See also* Dissenting Statement of Commissioner Noah Joshua Phillips Regarding the Commission's Withdrawal of the 1995 Policy Statement Concerning Prior Approval and Prior Notice Provisions in Merger Cases (July 21, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1592398/dissenting_statement_of_commissioner_phillips_regarding_the_commissions_withdrawal_of_the_1995.pdf.*

[2] Notice and Request for Comment Regarding Statement of Policy Concerning Prior Approval and Prior Notice Provisions in Merger Cases, 60 FR 39745, 39746 (August 3, 1995), *https://www.ftc.gov/system/files/documents/public_statements/410471/frnpriorapproval.pdf.*

[3] Paul J. Eliason et al., *How Acquisitions Affect Firm Behavior and Performance: Evidence from the Dialysis Industry,* 135 Quarterly J. Econ. 221, 235 (2020) (showing how the acquisitions of independent facilities have contributed to DaVita's overall growth).

[4] Thomas Wollmann, *How to Get Away With Merger: Stealth Consolidation and its Real Effects on US Healthcare* (Nat'l Bureau of Econ. Rsch., Working Paper No. 27274) (''In short, the FTC blocks nearly all reportable facility acquisitions resulting duopoly and monopoly. In sharp contrast, the dashed line reflects exempt facility acquisitions. These ownership changes witness effectively no enforcement actions, regardless of simulated HHI change. This includes dozens of facility acquisitions involving ΔHHI >2,000, several of which involve ΔHHI near 5,000.'').

[5] Eliason et al., *supra* note 3, at 223 (''We find that acquired facilities alter their treatments in ways that increase reimbursements and decrease costs. For instance, facilities capture higher payments from Medicare by increasing the amount of drugs they administer to patients, for which Medicare paid providers a fixed per-unit rate during our study period. . . . On the cost side, large chains replace high-skill nurses with lower-skill technicians at the facilities they acquire, reducing labor expenses. Facilities also increase the patient load of each employee by 11.7% and increase the number of patients treated at each dialysis station by 4.5%, stretching resources and potentially reducing the quality of care received by patients.'').

[6] *See, e.g.,* Statement of Commissioner Christine S. Wilson, Joined by Commissioner Rohit Chopra, Concerning Non-Reportable Hart-Scott-Rodino Act Filing 6(b) Orders (February 11, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1566385/statement_by_commissioners_wilson_and_chopra_re_hsr_6b.pdf#:~:text=Statement%20of%20Commissioner%20Christine%20S.%20Wilson%2C%20Joined%20by,that%20drive%20content%20curation%20and%20targeted%20advertising%20practices.*

[7] Analysis of Agreement Containing Consent Orders to Aid Public Comment, In the Matter of DaVita, Inc. and Total Renal Care, Inc., No. 211–0013 (October 25, 2021), (''[The Order] prohibits DaVita from entering into or enforcing non-compete agreements with any University nephrologist. . . .'').

[8] Letter from Chair Lina M. Khan to Chair Cicilline and Ranking Member Buck at 2 (Sept. 28, 2021), *https://docs.house.gov/meetings/JU/JU05/20210928/114057/HHRG-117-JU05-20210928-SD005.pdf* (''The FTC has heard concerns about noncompete clauses at its open meetings, and the Commission recently opened a docket to solicit public comment on the prevalence and effects of contracts that may harm fair competition. As we pursue this work, I am committed to considering the Commission's full range of tools, including enforcement and rulemaking.''); New Decade, New Resolve to Protect and Promote Competitive Markets for Workers, Remarks of Commissioner Rebecca Kelly Slaughter As Prepared for Delivery at FTC Workshop on Non-Compete Clauses in the Workplace at 1 (Jan. 9, 2020), *https://www.ftc.gov/system/files/documents/public_statements/1561475/slaughter_-_noncompete_clauses_workshop_remarks_1-920.pdf* (''I also want to thank the advocates and academics—including those participating today—who have raised awareness about and contributed both research and new ideas to the discussion concerning non-compete provisions in employment contracts. State attorneys general and their staff have also been at the forefront of this issue by investigating and initiating legal action to end unjustified and anticompetitive non-compete clauses in employment contracts.''); Letter from Commissioner Rohit Chopra to Assistant Attorney General Makan Delrahim at 3 (Sept. 18, 2019), *https://www.ftc.gov/system/files/documents/public_statements/1544564/chopra_-_letter_to_doj_on_labor_market_competition.pdf* (''A rulemaking proceeding that defines when a non-compete clause is unlawful is far superior than case-by-case adjudication.''); Open Markets Institute et al., Petition for Rulemaking to Prohibit Worker Non-Compete Clauses, (posted by the Fed. Trade Comm'n on July 21, 2021), *https://www.regulations.gov/document/FTC-2021-0036-0001.*

[9] Testimony of Commissioner Christine S. Wilson at the Hearing on Reviving Competition, Part 4: 21st Century Antitrust Reforms and the American Worker at 9–12, (Sept. 28, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1596880/commissioner_wilson_hearing_on_reviving_competition_part_4_-_21st_century_antitrust_reforms_and_the.pdf.*

[10] Muhammad U. Sharif et al., *The global nephrology workforce: Emerging threats and potential solutions!,* 9 Clinical Kidney J. 11, 13 (2016), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4720191/* (''These facts would suggest that the current nephrology workforce [in the U.S.] should increase in order to compensate for the expected growth in patient numbers. Unfortunately, the opposite appears to be the case.'').

[11] *See, e.g.,* Decision and Order, Gallo et al. No. 191–0110 at VI.A.4 (April 5, 2021), *https://www.ftc.gov/system/files/documents/cases/gallo-cbi_decision_and_order_final_201107.pdf*

support the provisions pertaining to non-competes in this matter—but my acquiescence to these provisions should not be construed as support for a sweeping condemnation of non-competes more generally.

Ban on No-Poach Agreements

The order contains an anti-no-poach provision that prevents DaVita from entering into any agreement that would restrict the divestiture buyer from soliciting DaVita's employees. I highlight this provision because some critics have asserted antitrust enforcement ignores competition for labor as an input.[12] I believe modern antitrust enforcement does, in fact, police the market for unlawful practices impacting competition for labor.[13] Naked no-poach agreements are per se illegal under the antitrust laws, and have been subject to enforcement accordingly.[14]

With respect to the instant matter, DaVita and its former CEO were recently indicted for agreeing with competitors to refrain from recruiting one another's employees.[15] In a past consent order, where respondents had entered into no-poach agreements, provisions explicitly prohibiting these agreements have been included in an order.[16] I support the inclusion of an anti-no-poach provision in this order because of the relevant allegations against DaVita and to allow the Commission to pursue an order violation if DaVita attempts to limit competition through anticompetitive no-poach agreements in the future.

[FR Doc. 2021–24554 Filed 11–9–21; 8:45 am]

BILLING CODE 6750–01–P

(''Remove any impediments within the control of Respondents that may deter relevant Divestiture Business Employees from accepting employment with the Acquirer, including removal of any non-compete . . .''); Decision and Order, Stryker et al., No. 201–0014 at VI.B.3 (Dec. 17, 2020), *https://www.ftc.gov/system/files/documents/cases/2010014c4728strykerwrightorder.pdf* (''Remove any impediments within the control of Respondents that may deter Implant Business Employees from accepting employment with the Acquirer, including removal of any non-compete . . .''); Decision and Order, Arko Holdings et al., No. 201–0041 at VI.B.3 (Oct. 7, 2020), *https://www.ftc.gov/system/files/documents/cases/c-4726_201_0041_arko_empire_order.pdf* (''Remove any impediments within the control of Respondents that may deter Retail Fuel Employees from accepting employment with an Acquirer . . .''). This consent does contain a new twist on our approach to non-competes. Specifically, DaVita may not enforce non-competes to the extent they prevent competitors or potential competitors from obtaining the services of a nephrologist, which will allow potential competitors to launch a competing dialysis clinic in Utah. Given my understanding of DaVita's business practices, the nephrologist shortage, and the historical industry context, I believe this remedy constitutes appropriate fencing-in relief.

[12] Testimony of Eric A. Posner on Antitrust and Labor Markets at 2 (Sept. 28, 2021), *https://docs.house.gov/meetings/JU/JU05/20210928/114057/HHRG-117-JU05-Wstate-PosnerE-20210928.pdf* (''Yet, while thousands of antitrust cases have been brought over the years, hardly any have addressed labor market cartelization. The Justice Department and the Federal Trade Commission have reviewed thousands of mergers, approving some and rejecting others, but have not even once analyzed the labor market effects of a merger.'').

[13] Testimony of Commissioner Christine S. Wilson at the Hearing on Reviving Competition, Part 4: 21st Century Antitrust Reforms and the American Worker at 12–14, (Sept. 28, 2021), *https://www.ftc.gov/system/files/documents/public_statements/1596880/commissioner_wilson_hearing_on_reviving_competition_part_4_-_21st_century_antitrust_reforms_and_the.pdf.*

[14] Dep't of Justice, Antitrust Div. & Fed. Trade Comm'n, Antitrust Guidance for Human Resource Professionals (Oct. 2016), *https://www.justice.gov/atr/file/903511/download.*

[15] Indictment, *United States* v. *DaVita Inc. et al.,* No. 1:21–cr–00229 (D. Colo. July 14, 2021).

[16] Press Release, Fed. Trade Comm'n, VieVu's Former Parent Company Safariland Agrees to Settle Charges That It Entered into Anticompetitive Agreements with Body-Worn Camera Systems Seller Axon (April 17, 2020), *https://www.ftc.gov/news-events/press-releases/2020/04/vievus-former-parent-company-safariland-agrees-settle-charges-it* (''According to the complaint, the agreements barred Safariland from competing with Axon now and in the future on all of Axon's products, limited solicitation of customers and employees by either company, and stifled potential innovation or expansion by Safariland. . . . Under the proposed order, Safariland is required to obtain approval from the Commission before entering into any agreement with Axon that restricts competition between the two companies.'').

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; Systems of Records

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice of Modification of Four Internal Systems of Records and Rescindment of One Internal System of Records.

SUMMARY: The US. Office of Government Ethics (OGE) proposes to revise four and rescind one of its existing internal systems of records under the Privacy Act.

The system of records to be rescinded is OGE/INTERNAL–2, which covers telephone call detail records that were used to verify employee telephone usage and to resolve billing discrepancies.

The four systems of records to be revised are the following:

• OGE/INTERNAL–1 Pay, Leave and Travel Records, which contains records related to OGE employees' pay, leave, and travel, including information regarding leave accrual rate, usage, and balances, salary withholdings, travel expenses, and usage of the transit fare subsidy program;

• OGE/INTERNAL–3 Grievance Records, which contains records relating to grievances filed by OGE employees;

• OGE/INTERNAL–4 Computer Systems Activity and Access Records, which contains information on the use of official email systems, user access to OGE's computer networks, and records related to the verification or authorization of an individual's access to systems, files, or applications; and

• OGE/INTERNAL–5 Employee Locator and Emergency Notification Records, which contains information regarding the organizational location, telephone extension, and hours of duty of OGE employees, as well as their personal contact information and the name, relationship, and telephone number of employees' emergency contacts.

DATES: The revisions and rescindment will be effective on November 10, 2021, subject to a 30-day period in which to comment on the new routine uses, described below. Please submit any comments by December 10, 2021. The new routine uses will be effective on that date.

ADDRESSES: Comments may be submitted to OGE by any of the following methods:

Email: usoge@oge.gov (Include reference to ''OGE Internal SORNs'' in the subject line of the message.)

Mail, Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Attention: Jennifer Matis, Associate Counsel, Washington, DC 20005–3917.

Instructions: Comments may be posted on OGE's website, *www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information before posting.

FOR FURTHER INFORMATION CONTACT: Jennifer Matis at the U.S. Office of Government Ethics; telephone: 202–482–9216; TTY: 800–877–8339; FAX: 202–482–9237; Email: *jmatis@oge.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, this document provides public notice that OGE is proposing to revise and update the OGE/INTERNAL–1,–3,–4, and –5 systems of records in several respects, and rescind OGE/INTERNAL–2, Telephone Call Detail Records.

First, OGE proposes to rescind one system of records that is no longer in use by OGE, OGE/INTERNAL–2, Telephone Call Detail Records. OGE no longer maintains these records and has

no plans to do so in the future. All records previously maintained under this system of records notice (SORN) have been destroyed in accordance with the National Archives and Records Administration General Records Schedule.

Second, OGE proposes to amend OGE/INTERNAL–1 Pay, Leave, and Travel Records, OGE/INTERNAL–3 Grievance Records, OGE/INTERNAL–4 Computer Systems Activity and Access Records, and OGE/INTERNAL–5 Employee Locator and Emergency Notification Records by updating the system locations, system managers, records access procedures, and notification procedures, in accordance with OGE's current organizational structure.

Third, OGE proposes to add two additional routine uses to OGE/INTERNAL–1 Pay, Leave, and Travel Records, OGE/INTERNAL–3 Grievance Records, OGE/INTERNAL–4, Computer Systems Activity and Access Records, and OGE/INTERNAL–5 Employee Locator and Emergency Notification Records in accordance with Office of Management and Budget guidance.

OMB Memorandum M–17–12 Preparing for and Responding to a Breach of Personally Identifiable Information (January 3, 2017) requires Federal agencies to publish routine uses to authorize disclosure of records that may reasonably be needed by a Federal agency or Federal entity in connection with breach response efforts. To satisfy the routine use requirements in OMB M–17–12, OGE proposes to add the two following routine uses to each of the four systems of records described above:

To appropriate agencies, entities, and persons when: (1) OGE suspects or has confirmed that there has been a breach of the system of records; (2) OGE has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OGE's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

To another Federal agency or Federal entity, when OGE determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

Fourth, OGE proposes to update its standard routine uses for all four revised SORNS. It proposes to combine and update the routine uses pertaining to litigation in OGE/INTERNAL–1 Pay, Leave, and Travel Records, OGE/INTERNAL–3 Grievance Records, OGE/INTERNAL–4, Computer Systems Activity and Access Records, and OGE/INTERNAL–5 Employee Locator and Emergency Notification Records in accordance with OMB and Department of Justice guidance and applicable case law. The remaining routine uses have been redesignated accordingly. It also proposes adding a routine use for reporting violations or potential violations of civil or criminal law or regulation to the SORNs that do not currently have such a routine use and making the wording consistent among the SORNs that do currently have it. Finally, OGE proposes to modify in accordance with OMB guidance the routine uses pertaining to congressional requests for assistance in the three systems that have such a routine use.

Fifth, OGE proposes to modify OGE/INTERNAL–1 Pay, Leave, and Travel Records to include records relating to requests for reasonable accommodations pursuant to the Rehabilitation Act of 1973 and Title VII of the Civil Rights Act. These records are similar in nature to those currently covered by the system and are collected and maintained according to similar procedures. OGE further proposes to change the system name to OGE/INTERNAL–1 Pay, Leave, Travel, and Reasonable Accommodation Records.

Accordingly, OGE publishes the following notice of rescindment and revisions:

SYSTEM NAME AND NUMBER (RESCINDMENT):

OGE/INTERNAL–2, Telephone Call Detail Records

HISTORY:

68 FR 3097.

SYSTEM NAME AND NUMBER:

OGE/INTERNAL–1, Pay, Leave, Travel, and Reasonable Accommodation Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917.

SYSTEM MANAGER(S):

Deputy Director for Compliance, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917, email: *usoge@oge.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5525; 5 U.S.C. app. (Ethics in Government Act of 1978); 44 U.S.C. 3101, 3102; 29 U.S.C. 701 *et seq.* (Rehabilitation Act of 1973); 42 U.S.C. 2000e (Title VII of the Civil Rights Act).

PURPOSE(S) OF THE SYSTEM:

These records are used to administer the pay, leave, and travel requirements of the Office of Government Ethics, including the administration of the transit fare subsidy program. The records are also used to collect and maintain records on employees who request or receive reasonable accommodation as required by the Rehabilitation Act of 1973 and Title VII of the Civil Rights Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Office of Government Ethics. The records may be retained after an employee leaves the Office of Government Ethics.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains various records relating to pay, leave, travel and requests for reasonable accommodations pursuant to the Rehabilitation Act of 1973 and Title VII of the Civil Rights Act. This includes information such as: Name; date of birth; social security number; home address; grade; employing organization; disability status, religious affiliation, accommodation requested and/or granted, timekeeper number; salary; pay plan; number of hours worked; leave accrual rate, usage, and balances; Civil Service Retirement and Federal Employees Retirement System contributions; FICA withholdings; Federal, state, and local tax withholdings; Federal Employee's Group Life Insurance withholdings; Federal Employee's Health Benefits withholdings; charitable deductions; allotments; garnishment documents; travel expenses; and information on the leave transfer program and fare subsidy program.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual to whom the record pertains.

b. Office of Government Ethics officials responsible for pay, leave, and travel requirements.

c. Other official personnel documents of the Office of Government Ethics.

ROUTINE USES:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible (hereinafter ''responsible agency'') for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the record either alone or in conjunction with other information indicates a violation or potential violation of civil or criminal law or regulation.

b. To disclose information when OGE determines that that the records are arguably relevant to a proceeding before a court, grand jury, or administrative or adjudicative body; or in a proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

c. To disclose information to the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.

f. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

g. To disclose information to the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.

h. To disclose information to the Social Security Administration (SSA) and the Department of the Treasury as required in accordance with their authorized functions, including Federal Insurance Collections Act withholding and benefits for the SSA and the issuance of paychecks and savings bonds for the Treasury.

i. To disclose information to State offices of unemployment compensation.

j. To disclose information to Federal Employees Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.

k. To disclose information to the Internal Revenue Service and State and local tax authorities.

l. To disclose information to any source from which additional information is requested relevant to an OGE determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

m. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

n. To disclose information to the authorized employees of another Federal agency that provides the Office of Government Ethics with manual and automated assistance in processing pay, leave, and travel.

o. To disclose information to officials of the Office of Special Counsel, Office of Personnel Management, Federal Labor Relations Authority, Merit Systems Protection Board or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties, including respectively in connection with cases and appeals, special studies of the civil service and other merit systems, review of personnel matters and practices, investigations of alleged or possible prohibited personnel and discrimination practices, Hatch Act matters, whistleblower protections, compliance with employee selection procedures and investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

p. To disclose information in compliance with orders, interrogatories, and other information requests relevant to garnishment orders that OGE is required to comply with in accordance with 42 U.S.C. 659 (support garnishment) and 5 U.S.C. 5520a (commercial garnishment) to a court of competent jurisdiction, an authorized official, or to an authorized State agency as defined in 5 CFR parts 581 and 582.

q. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

r. To disclose the names, social security numbers, home addresses, date of birth, date of hire, quarterly earnings, employer identifying information, and State of hire of employees to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act, Public Law 104–193, as amended.

s. To disclose information to appropriate agencies, entities, and persons when: (1) OGE suspects or has confirmed that there has been a breach of the system of records; (2) OGE has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OGE's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

t. To disclose information to another Federal agency or Federal entity, when OGE determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in paper and/or electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the name, social security number, or other identifier assigned to the individual on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are retained in accordance with the National Archives and Records Administration General Records Schedule (GRS) as follows:

a. GRS 2.3: Employee Relations Records;

b. GRS 2.4: Employee Compensation and Benefits Records; and

c. GRS 1.1: Financial Management and Reporting Records.

Disposal of paper records is by shredding, and disposal of electronic records is by deletion.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records are maintained in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RECORD ACCESS PROCEDURES:

Individuals requesting access to this system of records must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about themselves should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Social Security Number.

c. Dates of employment.

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

68 FR 3097.

SYSTEM NAME AND NUMBER:

OGE/INTERNAL–3, Grievance Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917.

SYSTEM MANAGER(S):

Deputy Director for Compliance, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917, email: *usoge@oge.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. (Ethics in Government Act of 1978); 5 U.S.C. 7121; 5 CFR part 771.

PURPOSE(S) OF THE SYSTEM:

These records are used to process grievances submitted by OGE employees for personal relief in a matter of concern or dissatisfaction.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former OGE employees who have filed grievances under OGE's administrative grievance procedures or under a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by OGE employees under administrative procedures authorized by 5 CFR part 771, and records of negotiated grievance and arbitration systems that OGE has or may establish through negotiations with recognized labor organizations in accordance with 5 U.S.C. 7121. These files contain all documents related to the grievance, which may include statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original decision, and related correspondence and exhibits, employment history, arbitrator's decision or report, record of appeal to the Federal Labor Relations Authority, and a variety of employment and personnel records associated with the grievance.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual on whom the record is maintained.

b. Testimony of witnesses.

c. OGE officials.

d. Related correspondence from organizations or persons.

e. Union officials (if information deals with a negotiated grievance matter).

f. Department of Labor, Federal Labor Relations Authority, or arbitrators involved in the grievance (if information deals with a negotiated grievance matter).

ROUTINE USES:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible (hereinafter ''responsible agency'') for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the record either alone or in conjunction with other information indicates a violation or potential violation of civil or criminal law or regulation.

b. To disclose information when OGE determines that that the records are arguably relevant to a proceeding before a court, grand jury, or administrative or adjudicative body; or in a proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

c. To disclose information to the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.

f. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

g. To disclose information to any source from which additional information is required in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

h. To disclose information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter.

i. To disclose information to officials of the Merit Systems Protection Board; the Office of Special Counsel; the Federal Labor Relations Authority; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties, including respectively in connection with cases and appeals, special studies of the civil service and other merit systems, review of personnel matters and practices, investigations of alleged or possible prohibited personnel and discrimination practices, Hatch Act matters, whistleblower protections, compliance with employee selection procedures and investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

j. To provide information to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

k. To provide information the Department of Labor in carrying out its functions regarding labor-management relations in the Federal service.

l. To disclose information to appropriate agencies, entities, and persons when: (1) OGE suspects or has confirmed that there has been a breach of the system of records; (2) OGE has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OGE's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

m. To disclose information to another Federal agency or Federal entity, when OGE determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in paper and/or electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the names of the individuals on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are retained in accordance with the National Archives and Records Administration General Records Schedule (GRS) 2.3 Employee Relations Records. Disposal of paper records is by shredding, and disposal of electronic records is by deletion.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records are maintained in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RECORD ACCESS PROCEDURES:

Individuals requesting access to this system of records must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of an administrative, judicial, or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment of their records to correct factual errors should contact the OGE Office of Administration and Information Management. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Approximate date of closing of the case and kind of action taken.

c. Organizational component involved.

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

68 FR 3097.

SYSTEM NAME AND NUMBER:

OGE/INTERNAL–4, Computer Systems Activity and Access Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917.

SYSTEM MANAGER(S):

Chief Information Officer, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917, email: *usoge@oge.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. (Ethics in Government Act of 1978); 40 U.S.C. 1441 note.

PURPOSE(S) OF THE SYSTEM:

The data in this system of records is used by OGE systems and security personnel, or persons authorized to assist these personnel, to plan and manage system services, to monitor for improper use, and to otherwise perform their official duties.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who access OGE network computers or servers, including individuals who send and receive electronic communications, access internet sites, or access system databases, files, or applications from OGE computers or who send electronic communications to OGE computers; and individuals attempting to access OGE computers or systems without authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system of records may include: records on the use of OGE email systems, including the email address of the sender and receiver of the email message, subject, date, and time; records on user access to OGE's office networks; records relating to verification or authorization of an individual's access to systems, files, or applications, such as user IDs, user names, title, and agency.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. Individuals who access the systems.

b. Office of Government Ethics employees and contractors responsible for managing the systems.

c. Computer activity logs and tracking systems.

ROUTINE USES:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible (hereinafter ''responsible agency'') for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the record either alone or in conjunction with other information indicates a violation or potential violation of civil or criminal law or regulation.

b. To disclose information when OGE determines that that the records are arguably relevant to a proceeding before a court, grand jury, or administrative or adjudicative body; or in a proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

c. To disclose information to the National Archives and Records Administration or the General Services Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

d. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

e. To disclose information to contractors, grantees, experts, consultants, detailees, and other non-OGE employees performing or working on a contract, service, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

f. To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.

g. To disclose information to a Federal, State, local, tribal or foreign agency, or a private contractor, in response to its request in connection with the hiring or retention of any employee, the issuance of a security clearance, the conduct of a security or suitability investigation, the reporting of an investigation on an employee, the letting of a contract, or the issuance of a grant, license, or other benefit to an employee by the agency, but only to the extent that the information disclosed is relevant and necessary to the agency's decision on the matter.

i. To disclose information to appropriate agencies, entities, and persons when: (1) OGE suspects or has confirmed that there has been a breach of the system of records; (2) OGE has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OGE's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

j. To disclose information to another Federal agency or Federal entity, when OGE determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in paper and/or electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records may be retrieved by user name, user ID, email address, or other identifying search term employed, depending on the record category.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are retained in accordance with General Records Schedule (GRS) 3.2 Information Systems Security Records. Disposal of paper records is by shredding, and disposal of electronic records is by deletion.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

These records are located in locked storage areas with controlled entry, or automated systems to which only authorized personnel have access. The use of password protection identification features and other automated data processing system protection methods also restrict access.

RECORD ACCESS PROCEDURES:

Individuals requesting access to this system of records must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about themselves should contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

b. Assigned computer location.

c. Description of information being sought (including the time frame during which the record(s) may have been generated).

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about themselves must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

68 FR 3097.

SYSTEM NAME AND NUMBER:

OGE/INTERNAL–5, Employee Locator and Emergency Notification Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917.

SYSTEM MANAGER(S):

Deputy Director for Compliance, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917, email: *usoge@oge.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. (Ethics in Government Act of 1978); 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

Information is collected for this system in order to identify an individual for OGE officials to contact, should an emergency of a medical or other nature involving the employee occur while the employee is on the job. Also, these records may be used by authorized OGE personnel to contact individuals working from home or at an authorized alternative worksite or, on infrequent occasions, to contact individuals absent from work about work-related issues.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Office of Government Ethics.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information regarding the organizational location, telephone extension, and hours of duty of individual OGE employees. The system also contains the home address and telephone number of the employee and the name, relationship, and telephone number of an individual or individuals to contact in the event of a medical or other emergency involving the employee. The system contains an additional freeform ''note'' field for personal medical information for employees who choose to voluntarily complete it.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual on whom the record is maintained.

ROUTINE USES:

a. To disclose information when OGE that that the records are arguably relevant to a proceeding before a court, grand jury, or administrative or adjudicative body; or in a proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

c. To disclose information to appropriate agencies, entities, and persons when: (1) OGE suspects or has confirmed that there has been a breach of the system of records; (2) OGE has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OGE's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

d. To disclose information to another Federal agency or Federal entity, when OGE determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

e. To disclose pertinent information to the appropriate Federal, State, or local agency responsible (hereinafter ''responsible agency'') for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the record either alone or in conjunction with other information indicates a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in paper and/or electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the name of the individual on whom they are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are retained in accordance with the National Archives and Records Administration General Records Schedule (GRS) 5.3: Continuity and Emergency Planning Records. Disposal of paper records is by shredding, and disposal of electronic records is by deletion.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records are maintained in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are maintained in a secured electronic system accessible only to on-site OGE employees. An individual OGE employee has access only to his or her own record. In addition, individual records in the system are available to authorized OGE personnel whose duties require access.

RECORD ACCESS PROCEDURES:

Individuals requesting access to this system of records must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

CONTESTING RECORD PROCEDURES:

OGE employees have full access to and complete control over their individual record and may amend information at any time, or they may contact the System Manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name.

Individuals requesting amendment must also follow OGE's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 2606).

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about themselves must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

68 FR 3097.

Approved: November 5, 2021.

Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2021–24567 Filed 11–9–21; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–368 and -R–144]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human 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 the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by January 10, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. 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' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

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–368 and –R–144 Medicaid Drug Rebate Program State Reporting Forms

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:* Medicaid Drug Rebate Program State Reporting Forms; *Use:* Form CMS 368 is a report of contact for the State to name the individuals involved in the Medicaid Drug Rebate Program (MDRP) and is required only in those instances where a change to the originally submitted data is necessary. The ability to require the reporting of any changes to these data is necessary to the efficient operation of these programs. Form CMS–R–144 is required from States quarterly to report utilization for any drugs paid for during that quarter.

While there are no changes to the CMS–R–144 form, we propose non-substantive verbiage updates to the corresponding CMR–R–144 File Format and corresponding Data Definitions. Form CMS–368 has been revised to include a signature/date line for the submitter to confirm that the information provided is accurate. We have also updated the entire CMS–368 form to a fillable format. We also propose to remove the one-time system update burden that was added in the last iteration of this collection of information request.

Form Number: CMS–368 and –R–144 (OMB control number: 0938–0582); *Frequency:* Quarterly and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 234; *Total Annual Hours:* 12,325. (For policy questions regarding this collection contact Andrea Wellington at 410–786–3490.)

Dated: November 5, 2021.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–24551 Filed 11–9–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10572]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human 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 (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 the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and 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 December 10, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

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:* Extension of a currently approved collection; *Title of Information Collection:* Transparency in Coverage Reporting by Qualified Health Plan Issuers; *Use:* Sections 1311(e)(3)(A)–(C) of the ACA, as implemented at 45 CFR 155.1040(a)–(c) and 156.220, establish standards for qualified health plan (QHP) issuers to submit specific information related to transparency in coverage. QHP issuers are required to post and make data related to transparency in coverage available to the public in plain language and submit this data to the Department of Health and Human Services (HHS), the Exchange, and the state insurance commissioner. Section 2715A of the Public Health Service (PHS) Act as added by the ACA largely extends the transparency provisions set forth in section 1311(e)(3) to non-grandfathered group health plans and health insurance issuers offering group and individual health insurance coverage. *Form Number:* CMS–10572 (OMB control number: 0938–1310); *Frequency:* Annually; *Affected Public:* Private sector (Business or Not-for-profit institutions); *Number of Respondents:* 360; *Total Annual Responses:* 360; *Total Annual Hours:* 17,160. (For policy questions regarding this collection contact Jack Reeves at 301–492–5152).

Dated: November 5, 2021.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–24549 Filed 11–9–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0223]

Proposed Information Collection Activity; State Self-Assessment Review and Report

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF) requests a 3-year extension of the State Self-Assessment Review and Report with minor revisions. The information collected in the report assists state child support agencies and OCSE in determining whether the agencies meet federal child support performance requirements. The current Office of Management and Budget (OMB) approval expires on April 30, 2022.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: State child support agencies are statutorily required to annually assess the performance of their child support enforcement programs and to provide a report of the findings to OCSE. The information collected in the State Self-Assessment Review and Report is used as a management tool to determine whether states are complying with federal mandates and to help states evaluate their programs and assess performances. There are no changes proposed to this information collection, but we have increased the estimated time per response based on feedback from respondents.

Respondents: States and territories.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of annual respondents	Total number of annual responses per respondent	Average annual burden hours per response	Annual burden hours
State Self-Assessment Review and Report and Instructions	54	1	8	432

Estimated Total Annual Burden Hours: 432.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 654(15)(A); 45 CFR 308.1(e).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2021–24604 Filed 11–9–21; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Center Program

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of supplemental award.

SUMMARY: HRSA provided supplemental funding to the Association of Clinicians for the Underserved (ACU), a currently funded National Training and Technical Assistance Partner award recipient. ACU leverages data tools and learning collaboratives to enhance current national training and technical

assistance activities delivered to health centers to improve their capacity to recruit, develop, and retain their workforce to address national health care workforce shortages.

FOR FURTHER INFORMATION CONTACT: Tracey Orloff, Strategic Partnerships Division Director in the Office of Quality Improvement, at *TOrloff@hrsa.gov* or 301.443.3197.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Association of Clinicians for the Underserved, Inc.

Amount of Non-Competitive Award: $275,000.

Period of Supplemental Funding: August 2021 to June 2023.

ALN: 93.129.

Authority: Section 330(l) of the Public Health Service Act, 42 U.S.C. 254b(l).

Justification: The National Center for Health Workforce Analysis estimates a shortage of over 23,000 primary care physician positions by 2025. Recruitment and retention programs are needed for health centers to address health care workforce shortages, which limit their ability to deliver comprehensive, culturally competent, high quality primary health care services.

ACU has unique experience developing learning collaboratives and can leverage their Solutions, Training, and Assistance for Recruitment and Retention Center and the Health Center Recruitment & Retention Data Profile Dashboard to advance in-scope training and technical assistance activities focused on enhancing health centers' ability to recruit, retain, and upskill their workforce. Supplemental funding is critical to ensure the timely expansion of the Solutions, Training, and Assistance for Recruitment and Retention Center and dashboard activities that enable health centers to conduct workforce data analysis, develop strategic plans, and enhance recruitment processes to attract and retain providers. ACU has the organizational capacity, expertise, and partnerships with Primary Care Associations, Health Center Controlled Networks, and other National Training and Technical Assistance Partners in place to immediately disseminate resources, tools, and strategies to improve workforce shortages at health centers.

Diana Espinosa,

Acting Administrator.

[FR Doc. 2021–24547 Filed 11–9–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

4-in-1 Grant Program

Announcement Type: New and Competing Continuation.

Funding Announcement Number: HHS–2022–IHS–UIHP2–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.193.

Key Dates

Application Deadline Date: February 8, 2022.

Earliest Anticipated Start Date: March 25, 2022.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for grants for the 4-in-1 Grant Program. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and Title V of the Indian Health Care Improvement Act (IHCIA), at 25 U.S.C. 1653(c)–(e) (authorizing grants for Health Promotion and Disease Prevention (HP/DP) services, Immunization services, and Mental Health services), and 1660a (authorizing grants for Alcohol and Substance Abuse related services). This program is described in the Assistance Listings located at *https://sam.gov/content/home* (formerly known as Catalog of Federal Domestic Assistance) under 93.193.

Background

In the late 1960s, Urban Indian community leaders began advocating at the local, state, and Federal levels to address the unmet health care needs of Urban Indians, and requested health care services and programs. These efforts resulted in an increase of preventative, medical, and behavioral health services, but there was growing recognition of challenges preventing Urban Indians in seeking health care services. To address these barriers, advocacy focused on the development of culturally-appropriate activities that were unique to the social, cultural, and spiritual needs of American Indians and Alaska Natives residing in urban settings. Programs developed at that time were staffed by volunteers in storefront settings, with limited budgets, offering primary care and outreach and referral services.

In response to efforts of the Urban Indian community leaders, Congress appropriated funds in 1966 through the IHS for a pilot urban clinic in Rapid City, South Dakota. In 1973, Congress appropriated funds to study unmet Urban Indian health needs in Minneapolis, Minnesota. The findings of this study documented cultural, economic, and access barriers to health care and led to congressional appropriations to support emerging Urban Indian clinics in several Bureau of Indian Affairs relocation cities, *e.g.,* Seattle, San Francisco, Tulsa, and Dallas. In 1976, Congress passed the IHCIA establishing the Urban Indian health program, and reauthorized the IHCIA in 2010 to improve the health and well-being of all American Indians and Alaska Natives, including Urban Indians. The development of programs for Urban Indians residing in urban areas include HP/DP services, immunization services, alcohol and substance abuse related services, and mental health services, hereafter referred to as the ''4-in-1 health program.''

Purpose

The purpose of this program is to ensure the highest possible health status for Urban Indians. Funding will be used to support the 4-in-1 health program objectives. These programs are integral components of the IHS health care delivery system. Funds from this effort will ensure that comprehensive, culturally acceptable personal and public health services are available and accessible to Urban Indians.

Required, Optional, and Allowable Activities

Each grantee shall provide health care services under this award only to eligible Urban Indians living within the urban center in which the Urban Indian Organization (UIO) is situated. An ''Urban Indian'' eligible for services, as codified at 25 U.S.C. 1603(13), (27), and (28), includes any individual who:

1. Resides in an urban center, which is any community that has a sufficient Urban Indian population with unmet health needs to warrant assistance under the IHCIA, as determined by the Secretary, Health and Human Services (HHS), and who meets one or more of the following criteria:

a. Irrespective of whether he or she lives on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including:

i. Those Tribes, bands, or groups terminated since 1940, and

ii. those recognized now or in the future by the state in which they reside, or

b. Is a descendant, in the first or second degree, of any such member described in 1.a.; or

c. Is an Eskimo, or Aleut, or other Alaska Native; or

d. Is a California Indian; [1] or

e. Is considered by the Secretary of the Department of the Interior to be an Indian for any purpose; or

f. Is determined to be an Indian under regulations pertaining to Urban Indian health that are promulgated by the Secretary, HHS.

Each grantee is responsible for taking reasonable steps to confirm that the individual is eligible for IHS services as an Urban Indian.

II. Award Information

Funding Instrument—Grant

Estimated Funds Available

The total funding identified for fiscal year (FY) 2022 is approximately $8.5 million. Individual award amounts for the first budget year are anticipated to be between $160,000 and $650,000. New applicants may apply for funding up to $200,000; current 4-in-1 grantees may apply for funding up to the amount approved in the last noncompeting award and must demonstrate that they have complied with previous terms and conditions of their award. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately 33 awards will be issued under this program announcement.

Period of Performance

The period of performance is for 5 years.

III. Eligibility Information

1. Eligibility

• To be eligible for this FY 2022 funding opportunity, an applicant must be an Urban Indian organization, as defined by 25 U.S.C. 1603(29), that is currently administering a contract or receiving a grant pursuant to 25 U.S.C. 1653. The term ''Urban Indian organization'' means a nonprofit corporate body situated in an urban center, governed by an Urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. 1653(a). Applicants must provide proof of nonprofit status with the application, *e.g.,* 501(c)(3).

The program office will notify any applicants deemed ineligible.

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as proof of nonprofit status.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

Additional Required Documentation

Documentation of Support

The UIO must submit a letter of support from their organization's board of directors.

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

Mandatory documents for all applicants include:

• Abstract (one page) summarizing the project.

• Application forms:

1. SF–424, Application for Federal Assistance.

2. SF–424A, Budget Information—Non-Construction Programs. Each of the 4-in-1 health program areas (HP/DP, immunization, alcohol and substance abuse, and mental health), should be addressed in a separate Grant Program Function or Activity row/column of the SF–424A.

3. SF–424B, Assurances—Non-Construction Programs.

• Project Narrative (not to exceed 20 pages). See Section IV.2.A, Project Narrative for instructions.

1. Background information on the organization.

2. Statement of need, proposed scope of work, required objectives, and activities that provide a description of what the applicant plans to accomplish and evaluation and performance measurement plan.

• Budget Justification and Narrative (not to exceed five pages). See Section IV.2.B, Budget Narrative for instructions.

• Letter of Support from the UIO's Board of Directors.

• 501(c)(3) Certificate.

• Biographical sketches for all Key Personnel (not to exceed one page each).

• Contractor/Consultant proposed scope of work and letter of commitment (not to exceed one page each, if applicable).

• Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.

• Certification Regarding Lobbying (GG-Lobbying Form).

• Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).

• Organizational Chart or written information that shows where the 4-in-1 health program areas fit into the larger organization.

• Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or

2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://harvester.census.gov/facdissem/Main.aspx.*

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by

[1] Consistent with 25 U.S.C. 1603(3), (13), (28), and 1679, eligibility of California Indians may be demonstrated by documentation that the individual:

1. Is a descendant of an Indian who was residing in the State of California on June 1, 1852;

2. Holds trust interests in public domain, national forest, or Indian reservation allotments; or

3. Is listed on the plans for distribution of assets of California Rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), or is the descendant of such an individual.

Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. Project Narrative

This narrative should be a separate document that is no more than 20 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger; (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and will not be reviewed. The 20-page limit for the narrative does not include the standard forms, budget, budget justification, narrative, and/or other items.

There are three parts to the narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Organizational Capacity. See below for additional details about what must be included in the narrative.

Part 1: Program Information

Section 1: Needs

The statement of need describes the history and urban center currently served by the applicant. The statement of need also provides the facts and evidence that support the need for each of the 4-in-1 health program areas and establishes that the UIO understands the problems and can reasonably address them.

- Describe the current service gaps, including disconnection between available services and unmet needs of Urban Indians. This should include services at the UIO and in communities where Urban Indians reside.
- Describe the need for an enhanced infrastructure to increase the capacity to implement, sustain, and improve effective health care services offered to Urban Indians and any other service gaps and problems related to the need for infrastructure development within the UIO.

Part 2: Program Planning and Evaluation

Section 1: Program Plans

State the purpose, goals, and objectives of your proposed projects. Clearly state how proposed activities address the needs detailed in the statement of need. Describe fully and clearly plans to meet each of the 4-in-1 health program areas of this funding announcement. Each objective should be addressed with a corresponding time frame. Provide a work plan for year 1 budget period that details expected key activities, accomplishments, and includes responsible staff for each of the 4-in-1 health program areas.

Section 2: Program Evaluation

This section of the narrative should describe efforts to collect and report project data that will support and demonstrate grant activities for each of the 4-in-1 health program areas. Grantees will be required to participate in a national evaluation of the 4-in-1 grant program. Grantees will also be required to collect and report data pertaining to activities, processes, and outcomes. Data collection activities should capture and document actions conducted throughout awarded years, including activities that will contribute to relevant project impact. This section should also describe the applicant's plan to evaluate program activities, including any practice-based and evidence-based prevention or treatment programs implemented. The evaluation plan should describe expected results and any identified metrics to support program effectiveness. Evaluation plans should incorporate questions related to outcomes and processes, including documentation of lessons learned.

- Describe in a brief narrative a plan to monitor activities under each of the 4-in-1 health program areas to demonstrate progress towards program outcomes and inform future program decisions over the 5-year project period.
- Describe proposed evaluation methods, including performance measures and other data relevant to evaluation outcomes, including intended results (*e.g.,* impact and outcomes). Include any partners who will assist in evaluation efforts if separate from the primary applicant.

Part 3: Organizational Capacity

Section 1: This section should describe your organizational capacity for each of the 4-in-1 health program areas. Current staff and future positions for the four program components should also be outlined.

- Identify qualified professionals who will implement and administer the proposed grant activities, including progress and financial reports.
- Identify a contact person to maintain open and consistent communication with the IHS program official on any programmatic barriers to meeting the requirements of the award.
- Describe the organization's current system and ability to develop partnerships with service providers and community programs, including families and support systems of Urban Indians.
- Describe potential project partners and community resources in the urban center.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs). The budget narrative document can include a more detailed spreadsheet than is provided by the SF–424A. Each 4-in-1 health program area should have a separate budget. The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. For subsequent budget years (see Multi-Year Project Requirements in Section V.1, Application Review Information, Evaluation Criteria), the narrative should highlight the changes from the first year or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), Acting Director, DGM, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and indirect costs.
- Only one grant may be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Paul Gettys, Acting Director, DGM. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Paul.Gettys@ihs.gov.* The waiver request must: (1) Be documented in writing (emails are acceptable) before submitting an application by some other method; and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to the DGM. Applications that are submitted without a copy of the signed waiver from the Acting Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify the applicant that the application has been received.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B that uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through *https://fedgov.dnb.com/webform,* or call (866) 705–5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that are not registered with SAM must have a DUNS number first, then access the SAM online registration through the SAM home page at *https://sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include only the first year of activities; information for multi-year projects should be included as a separate document. See ''Multi-year Project Requirements'' at the end of this section for more information. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the project narrative. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

Applications will be reviewed and scored according to the quality of responses to the required application components in Sections A–E outlined below. In developing the required sections of this application, use the instructions provided for each section, which have been tailored to this program. The application must use the five sections (Sections A–E) listed below in developing the narratives. The applicant must place the required information in the correct section or it will not be considered for review. The application will be scored according to how well the applicant addresses the requirements for each section listed below. The number of points after each section heading is the maximum number of points the Objective Review Committee (ORC) may assign to that section. Although scoring weights are not assigned to individual bullets, each bullet is assessed deriving the overall section score.

A. Introduction and Need for Assistance (25 Points)

1. Identify the proposed urban center and provide demographic information

on the population(s) to receive services. Describe the stakeholders and resources in the urban center that can help implement activities for each of the 4-in-1 health program areas.

2. Based on the information and/or data currently available, document the need to implement, sustain, and improve health care services offered to Urban Indians.

3. Based on available data, describe the service gaps and other problems related to the needs of Urban Indians. Identify the source of the data. Documentation of need may come from a variety of qualitative and quantitative sources. Examples of data sources for the quantitative data that could be used are local epidemiologic data such as Tribal Epidemiology Centers or IHS Area Offices, state data from state needs assessments, and/or national data from the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Survey on Drug Use and Health, or from the National Center for Health Statistics/Centers for Disease Control, and U.S. Census data (American Community Survey, etc.). This list is not exhaustive. Applicants may submit other valid data, as appropriate, for the applicant's programs.

B. Project Objective(s), Work Plan, and Approach (30 Points)

1. Describe the purpose of the proposed project, including a clear statement of goals and objectives. The project narrative is required to address each of the 4-in-1 health program areas.

a. *HP/DP:* Applicants are encouraged to use evidence-based and promising strategies that can be found at the IHS best practice database at *https://www.ihs.gov/hpdp/,* SAMHSA Evidence-based Practices Resource Center at *https://www.samhsa.gov/resource-search/ebp,* and the Guide to Community Preventive Services at *https://www.thecommunityguide.org/about/about-community-guide.* Applicants are encouraged to work collaboratively with their assigned Area HP/DP Coordinator.

b. *Immunization:* Applicants are encouraged to participate in the Vaccines for Children program (if applicable). Applicants are encouraged to research capability with state/regional immunization registry (where applicable). For sites using the IHS Resource and Patient Measurement System (RPMS), provide training sessions to providers and data entry clerks on the RPMS Immunization package. Establish a process for immunization data entry into RPMS (*e.g.,* point of service or through standard data entry). Utilize the RPMS Immunization package to identify 3- to 27-month-old children whose immunization records are not up to date and that generate reminder/recall letters. Applicants are encouraged to work collaboratively with their assigned Area Immunization Coordinator.

c. *Alcohol and Substance Abuse:* Describe services to be provided, *e.g.,* residential, detox, halfway house, counseling, outreach and referral, etc. Describe substance abuse prevention and education efforts to increase access to services, outreach, education, prevention, and treatment of substance abuse related issues. Applicants are encouraged to work collaboratively with their assigned Area Behavioral Health Consultant.

d. *Mental Health:* Identify services to be provided, *e.g.,* community outreach and referral, prevention, training sessions, evaluations, schools, domestic violence programs, child abuse programs, etc. Describe mental health prevention and education program efforts to increase access to services, outreach, referral, education, prevention, and treatment of mental health related issues. Applicants are encouraged to work collaboratively with their assigned Area Behavioral Health Consultant.

2. Describe how project activities will increase the capacity of the UIO to improve access to and quality of care for Urban Indians.

3. Describe anticipated barriers and how these barriers will be addressed.

4. Describe how the proposed project will address issues of diversity for Urban Indians, including race/ethnicity, gender, culture/cultural identity, language, sexual orientation, disability, and literacy.

5. Describe how Urban Indians may receive services for the 4-in-1 health program areas and how they will be involved in the planning and implementation of the grant.

6. Describe how the efforts of the proposed project will be coordinated with any other related Federal grants, including the IHS, Centers for Disease Control and Prevention, SAMHSA, or Health Resources and Services Administration, etc. (if applicable).

7. Provide a work plan for the first year budget period that details expected key activities, accomplishments, and includes responsible staff for each of the 4-in-1 health program areas.

C. Program Evaluation (20 Points)

Describe plans to monitor activities under each of the 4-in-1 health program areas, demonstrate progress towards program outcomes, and inform future program decisions over the 5 year project period. Applications should address the following points:

1. Describe proposed data collection efforts (performance measures and associated data) and how you will use the data to answer evaluation questions. This should include data collection method, data source, data measurement tool, identified staff for data management, and data collection timeline.

2. Identify key program partners and describe how they will participate in the implementation of the evaluation plan (*e.g.,* Tribal Epidemiology Centers, universities, etc.).

3. Describe data collection and evaluation of any proposed practice-based and/or evidence-based care programs implemented throughout awarded years.

4. Describe how evaluation findings will be used at the applicant level. Discuss how data collected (*e.g.,* performance measurement data) will be used and shared by the key program partners.

5. Discuss any barriers or challenges expected for implementing the plan, collecting data (*e.g.,* responding to performance measures), and reporting on evaluation results. Describe how these potential barriers would be overcome. In addition, applicants may also describe other measures to be developed or additional data sources and data collection methods that applicants will use.

D. Organizational Capabilities, Key Personnel, and Qualifications (15 Points)

1. Describe the management capability of the UIO and other participating organizations in administering similar projects.

2. Identify staff to maintain open and consistent communication with the IHS program official on any financial or programmatic barriers to meeting the requirements of the award.

3. Identify the department(s) and/or division(s) that will administer each of the 4-in-1 health program areas. Include a description of these department(s) and/or division(s), their functions, and their placement within the UIO and their direct link to management.

4. Discuss the UIO's experience and capacity to provide culturally appropriate and competent services to the community and specific populations of focus.

5. Describe the resources available for the proposed project (*e.g.,* facilities, equipment, information technology systems, and financial management systems).

6. Identify other organization(s) that will participate in the proposed project. Describe their roles and responsibilities and demonstrate their commitment to each of the 4-in-1 health program areas.

7. Describe how project continuity will be maintained if there is a change in the operational environment (*e.g.,* staff turnover, change in project leadership, etc.) to ensure project stability over the life of the grant.

8. Provide a list of staff positions for the project and other key personnel, showing the role of each and their level of effort and qualifications for each of the 4-in-1 health program areas. Key personnel include the Chief Executive Officer or Executive Director, Chief Financial Officer, Medical Director, and Chief Information Officer.

9. Demonstrate successful project implementation for the level of effort budgeted for the project staff and other key staff.

10. Include position descriptions (upload as Other Attachments) for all key personnel. Position descriptions should not exceed one page each. Reviewers will not consider information past one page.

11. For individuals who are currently on staff, include a biographical sketch with their name (do not include personally identifiable information such as social security number or date and place of birth) for each individual that will be listed as the project staff and other key positions. Describe the experience of identified staff in each of the 4-in-1 health program areas. Upload each biographical sketch in the Other Attachments form in your *Grants.gov* application workspace. Biographical sketches should not exceed one page per staff member. Reviewers will not consider information past one page. Do not include any of the following:

a. Personally Identifiable Information (social security number and date and place of birth);

b. Resumes; or

c. Curriculum Vitae.

E. Categorical Budget and Budget Justification (10 Points)

1. Include a line item budget for each of the 4-in-1 health program areas for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative for the first budget year only.

2. Provide a categorized budget for each of the 4-in-1 health program areas.

3. Applicants should ensure that the budget and budget narrative are aligned with the project narrative. The budget and budget narrative the applicant provides will be considered by reviewers in assessing the applicant's submission, along with the material in the project narrative. Questions to address include: What resources are needed to successfully carry out and manage the project? What other resources are available from the organization? Will new staff be recruited? Will outside consultants be required?

4. For any outside consultants, include the total cost broken down by activity.

5. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the current negotiated IDC rate agreement in the Other Attachments form in the application workspace.

Multi-Year Project Requirements

Applications must include a brief project narrative and budget (1 additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional documents can be uploaded as Other Attachments in *Grants.gov*. These can include:

- Work plan, logic model, and/or timeline for proposed objectives.
- Position descriptions for key staff (not to exceed one page each).
- Biographical sketch of key staff that reflect current duties (not to exceed one page each).
- Consultant or contractor proposed scope of work and letter of commitment (not to exceed one page each) (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, project period limit) will not be referred to the ORC and will not be funded. The applicant will be notified of this determination. Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Office of Urban Indian Health Programs within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The Notice of Award (NoA) is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence, other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization, is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2020-title45-vol1/pdf/CFR-2020-title45-vol1-part75.pdf.*
- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at *https://www.ecfr.gov/cgi-bin/*

retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75_1372#se45.1.75_1372.

C. Grants Policy:

• HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles:

• Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' located at 45 CFR part 75 subpart E.

E. Audit Requirements:

• Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' located at 45 CFR part 75 subpart F.

F. As of August 13, 2020, 2 CFR 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all recipients that request reimbursement of indirect costs (IDC) in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs, ''any non-Federal entity (NFE) [*i.e.,* applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely. As described in Section 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.''

Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in Section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required quarterly. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). Grantees have the option to use the 4-in-1 Grant Reporting Template instead of developing their own format. The template is available at the 4-in-1 Grant web page at *https://www.ihs.gov/urban/4-in-1-grant-program/.*

The quarterly Progress Report shall demonstrate actual goals and objectives were met against established target measures, a summation of the program approach, and report on integrated cultural interventions and implementation of practice-based and/or evidence-based approaches, including a concise summary narrative of the program's impact on the Urban Indian service population. If applicable, program changes for the next reporting period may be included.

To comply with statutory requirements consistent with 25 U.S.C. 1653(a), 1655, and 1657(a), the Progress Reporting Template includes a section for the grantee to report their unmet needs or the grantee may use their own format to report their unmet needs. This includes information gathered by the grantee to: (1) Identify gaps between unmet health needs of Urban Indians and the resources available to meet such needs; and (2) make recommendations to the Secretary and Federal, state, local, and other resource agencies on methods of improving health services to meet the needs of Urban Indians.

The final end of year and 4th quarter report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services at *https://pms.psc.gov.* Failure to submit timely reports may result in adverse award actions blocking access to funds.

Federal Financial Reports are due 30 days after the end of each budget period, and a final report is due 90 days after the end of the Period of Performance. Grantees are responsible and accountable for reporting accurate information on all required reports: The Progress Reports, the Federal Cash Transaction Report, and the Federal Financial Report.

C. Data Collection and Reporting

1. Government Performance and Results Act Reporting (GPRA)

The GPRA data period shall be the Federal fiscal year of October 1 through September 30. GPRA data shall be submitted electronically to the National Data Warehouse (NDW). All GPRA data submitted shall be verifiable and based upon criteria set forth for each GPRA

performance standard. Monthly registration and workload data shall be exported to the NDW. All data shall be exported by the cutoff date for that fiscal year. A GPRA Developmental Report shall be run at the end of the second and fourth quarters and sent to the National GPRA Support Team at *caogpra@ihs.gov* by the required due dates.

2. Uniform Data System (UDS)

UDS reporting period shall be by calendar year. The UDS reports shall be due in January for the previous calendar year.

3. Quarterly Immunization Report

Quarterly Immunization Reports are required and submitted to the online National Immunization Reporting System (NIRS) (*https://www.ihs.gov/NonMedicalPrograms/ihpes/immunizations/index.cfm?module=immunizations&option=home*). Grantees are required to submit immunization coverage reports on children 3 to 27-month-old, 2-year-old, Adolescent, Adult, and Influenza on a quarterly basis. For sites not using the IHS RPMS, visit the Division of Epidemiology and Disease Prevention (DEDP), Vaccine-Preventable Diseases Reports website to access non-RPMS quarterly reporting forms. An Excel spreadsheet with the required data elements can be found under the ''Non-RPMS Quarterly Reporting Forms'' section at *https://www.ihs.gov/epi/vaccine/reports/.*

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

E. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Should you successfully compete for an award, recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age and, in some circumstances, religion, conscience, and sex (including gender identity, sexual orientation, and pregnancy). This includes ensuring programs are accessible to persons with limited English proficiency and persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html.*

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficiency individuals, see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov.*
- For information on your specific legal obligations for serving qualified individuals with disabilities, including reasonable modifications and making services accessible to them, see *https://www.hhs.gov/ocr/civilrights/understanding/disability/index.html.*
- HHS funded health and education programs must be administered in an environment free of sexual harassment, see *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html.*
- For guidance on administering your program in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws, see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html.*

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://www.fapiis.gov* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and recipients must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Paul Gettys, Acting Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *Paul.Gettys@ihs.gov.*

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/,* (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Debi Nalwood, Health System Specialist, Indian Health Service, Office of Urban Indian Health Programs, 5600 Fishers Lane, Mail Stop: 08E65D, Rockville, MD 20857, Phone: (240) 701–0882, Email: *Debiallison.Nalwood@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Pallop Chareonvootitam, Grants Management Specialist, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2195, Email: *Pallop.Chareonvootitam@ihs.gov*.

3. Questions on systems matters may be directed to: Paul Gettys, Acting Director, Division of Grants Management, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Email: *Paul.Gettys@ihs.gov*.

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

[FR Doc. 2021–24577 Filed 11–9–21; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; RFA Review: Practice-Based Research for Implementing Scalable Evidence-Based Prevention Interventions in Primary Care Settings.

Date: December 3, 2021.

Time: 1:00 p.m. to 4:00 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: Nicholas Gaiano, Ph.D., Review Branch Chief, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/Room 6150/MSC 9606, 6001 Executive Boulevard, Bethesda, MD 20892–9606, 301–443–2742, *nick.gaiano@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: November 4, 2021.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–24517 Filed 11–9–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0626]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0094

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0094, Ships Carrying Bulk Hazardous Liquids; without change.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before December 10, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2021–0626]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2021–0626], and must be received by December 10, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0094.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (86 FR 45743, August 16, 2021) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Ships Carrying Bulk Hazardous Liquids.

OMB Control Number: 1625–0094.

Summary: This information is needed to ensure the safe transport of bulk hazardous liquids on chemical tank vessels and to protect the environment from pollution.

Need: Under 46 U.S.C. 3703, the Coast Guard is authorized to prescribe regulations for protection against hazards to life, property, and navigation and vessel safety, and protection of the marine environment. The regulations for the safe transport by vessel of certain bulk dangerous cargoes are contained in 46 CFR part 153.

Forms:

- CG–4602B, Cargo Record Book.
- CG–5148, International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk.
- CG–5148A, Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.
- CG–5148B, Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.
- CG–5148C, Certificate of Fitness.
- CG–5461, International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.

Respondents: Owners and operators of chemical tank vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 7,611 hours to 9,310 hours a year due to an increase in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 5, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–24582 Filed 11–9–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0625]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0060

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0060, Vapor Control Systems for Facilities and Tank Vessels; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before December 10, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2021–0625]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management,

telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2021–0625], and must be received by December 10, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0060.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (86 FR 45744, August 16, 2021) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Vapor Control Systems for Facilities and Tank Vessels.

OMB Control Number: 1625–0060.

Summary: The information is needed to ensure compliance with U.S. regulations for the design of facility and tank vessel vapor control systems (VCS). The information is also needed to determine the qualifications of a certifying entity.

Need: Title 46 U.S. Code 3703 and 70011 authorizes the Coast Guard to establish regulations to promote the safety of life and property of facilities and vessels. Title 33 CFR part 154 subpart P and 46 CFR part 39 contains the Coast Guard regulations for VCS and certifying entities.

Forms: None.

Respondents: Owners and operators of facilities and tank vessels, and certifying entities.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 8,870 hours to 4,409 hours a year due to a decrease in the number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 5, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–24580 Filed 11–9–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0624]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0045

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0045, Adequacy Certification for Reception Facilities and Advance Notice; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before December 10, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2021–0624]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2021–0624], and must be received by December 10, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0045.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (86 FR 45745, August 16, 2021) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Adequacy Certification for Reception Facilities and Advance Notice.

OMB Control Number: 1625–0045.

Summary: This information helps ensure that waterfront facilities are in compliance with reception facility standards. Advance notice information from vessels ensure effective management of reception facilities.

Need: Section 1905 of Title 33 U.S.C. gives the Coast Guard the authority to certify the adequacy of reception facilities in ports. Reception facilities are needed to receive waste from ships which may not discharge at sea. Under these regulations in 33 CFR part 158 there are discharge limitations for oil and oily waste, noxious liquid substances, plastics and other garbage.

Forms:

- CG–5401, Certificate of Adequacy for Reception Facility.
- CG–5401A, Application for a Reception Facility Certificate of Adequacy (COA) for Oil, Form A.
- CG–5401B, Application for a Reception Facility Certificate of Adequacy (COA) for Noxious Liquid Substance (NLS) Residues and Mixtures Containing NLS Residues, Form B.
- CG–5401C, Application for a Reception Facility Certificate of Adequacy for Garbage, Form C.
- CG–5401D, Application for a Reception Facility Certificate of Adequacy for Ozone Depletion Substances and Exhaust Gas Cleaning System Residue, Form D.

Respondents: Owners and operators of reception facilities, and owners and operators of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 4,825 hours to 4,167 hours a year due to a decrease in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 5, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–24584 Filed 11–9–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0410]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0013

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0013, Plan Approval and Records for Load Lines; without change.

Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: You may submit comments to the Coast Guard and OIRA on or before December 10, 2021.

ADDRESSES: Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at *https://www.regulations.gov.* Search for docket number [USCG–2021–0410]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2021–0410], and must be received by December 10, 2021.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the *https://www.reginfo.gov,* comment-submission web page. OIRA posts its decisions on ICRs online at *https://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0013.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (86 FR 46863, August 20, 2021) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Plan Approval and Records for Load Lines.

OMB Control Number: 1625–0013.

Summary: This information collection is required to ensure that certain vessels are not overloaded—as evidenced by the submerging of their assigned load line. In general, vessels over 150 gross tons or 24 meters (79 feet) in length engaged in commerce on international or coastwise voyages by sea are required to obtain a Load Line Certificate.

Need: Title 46 U.S. Code 5101 to 5116 provides the Coast Guard with the authority to enforce provisions of the International Load Line Convention, 1966. Title 46 CFR subchapter E—Load Lines, contains the relevant regulations.

Forms: None.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 757 hours to 687 hours a year due to a decrease in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 5, 2021.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021–24581 Filed 11–9–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2021–0027; OMB No. 1660–NW141]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Business Emergency Operation Center (NBEOC) Membership Agreement Form

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-day notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an existing information collection in use without an OMB control number. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA's compilation and information sharing leveraging the National Business Emergency Operation Center (NBEOC) stakeholder listing. FEMA seeks to voluntarily continue the standing practice of collecting entity specific information for dissemination during an event to assist in response/recovery operations.

DATES: Comments must be submitted on or before January 10, 2022.

ADDRESSES: Submit comments at *www.regulations.gov* under Docket ID FEMA–2021–0027. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID, and will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Odell, Operations and Insight Management Branch Chief, Office of Business Industry, and Infrastructure Integration (OB3I), (202) 258–2076 or *Donald.Odell@fema.dhs.gov.* You may contact the Information Management Division for copies of the proposed collection of information at *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) is requesting the information written on this form to establish your identity and your consent to disclose the information provided on the National Business Emergency Operations Center Membership Agreement form under the form's ''NBEOC contact information'' section, to all NBEOC members and participants of NBEOC meetings or events. Written consent is requested pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(b). The program for which this form may be used is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended, 42 U.S.C. 5121 –5207; The Homeland Security Act of 2002, 6 U.S.C. 311–321j; 44 CFR 206.2(a)(27); the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193); and Exec. Order No. 13411, Improving Assistance for Disaster Victims.

Information collected is as follows: Entity Name, Entity Representative, Duty Title, Work Phone, Work Email, Your full name, Current Address, Place of Birth, Date of Birth, and Signature.

FEMA may externally share the information you provide as generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, the ''routine uses'' published in DHS/ALL–002 Department of Homeland Security Mailing and Other Lists System 73 FR 71659 (November 25, 2008), and as authorized by your written consent. The information provided to FEMA regarding you and your entity may be subject to release under the Freedom of Information Act (5 U.S.C. 552). A complete list of the routine uses can be found in the system of records notice DHS/ALL–002 Department of Homeland Security Mailing and Other Lists System 73 FR 71659 (November 25, 2008). The Department's full list of systems of record notices can be found on the Department's website at *http://www.dhs.gov/system-records-notices-sorns.*

Collection of Information

Title: National Business Emergency Operation Center (NBEOC) Membership Agreement Form.

Type of Information Collection: Existing collection in use without an OMB control number.

OMB Number: 1660–NW141.

FEMA Forms: FEMA Form FF–145–FY–21–101, National Business Emergency Operation Center (NBEOC) Membership Agreement Form.

Abstract: FEMA's NBEOC collects this data for the primary purpose of maintaining a private sector stakeholder roster and mailing list for information dissemination, outreach, and coordination. FEMA leverages this information to engage stakeholders to coordinate disaster response operations, garner donations, and gain situational awareness around private sector actions that will help inform FEMA Leadership and assist evidence-based decision making.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Number of Respondents: 232.

Estimated Number of Responses: 232.

Estimated Total Annual Burden Hours: 116.

Estimated Total Annual Respondent Cost: $6,817.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $7,165.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent L. Brown,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2021–24569 Filed 11–9–21; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0108]

RIN 1601–ZA11

Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services (USCIS) may generally only approve petitions for H–2A and H–2B nonimmigrant status for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the **Federal Register**. Each such notice shall be effective for one year after its date of publication. This notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is identifying 85 countries whose nationals are eligible to participate in the H–2A program and 86 countries whose nationals are eligible to participate in the H–2B program for the coming year.

DATES: The designations in this notice are effective from November 10, 2021 and shall be without effect on November 10, 2022.

FOR FURTHER INFORMATION CONTACT: Ihsan Gunduz, Office of Strategy, Policy, and Plans, Department of Homeland Security, Washington, DC 20528, (202) 282–9708.

SUPPLEMENTARY INFORMATION:

Background

Generally, USCIS may approve H–2A and H–2B petitions for nationals of only those countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated as participating

countries.[1] Such designation must be published as a notice in the **Federal Register** and expires after one year. In designating countries to include on the lists, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) The country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1). Examples of specific factors serving the U.S. interest that are taken into account when considering whether to designate or terminate the designation of a country include, but are not limited to: Fraud (such as fraud in the H–2 petition or visa application process by nationals of the country, the country's level of cooperation with the U.S. government in addressing H–2 associated visa fraud, and the country's level of information sharing to combat immigration-related fraud), nonimmigrant visa overstay[2] rates for nationals of the country (including but not limited to H–2A and H–2B nonimmigrant visa overstay rates), and non-compliance with the terms and conditions of the H–2 visa programs by nationals of the country.

As previously indicated, *see* 86 FR 2689, in evaluating the U.S. interest, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will generally ascribe a negative weight to evidence that a country had a suspected in-country visa overstay rate of 10 percent or higher with a number of expected departures of 50 individuals or higher in either the H–2A or H–2B classification according to U.S. Customs and Border Protection overstay data, and generally will terminate designation of that country from the H–2A or H–2B nonimmigrant visa program, as appropriate, unless, after consideration of other relevant factors, it is determined not to be in the U.S. interest to do so.

Similarly, DHS recognizes that countries designated under long-standing practice by U.S. Immigration and Customs Enforcement (ICE) as ''At Risk of Non-Compliance'' or ''Uncooperative'' with removals based on ICE data put the integrity of the immigration system and the American people at risk. Therefore, unless other favorable factors in the U.S. interest outweigh such designations by ICE, the Secretary of Homeland Security, with the concurrence of the Secretary of State, generally will terminate designation of such countries from the H–2A and H–2B nonimmigrant visa programs. Because there are separate lists for the H–2A and H–2B categories, it is possible that, in applying the above-described regulatory criteria for listing countries, a country may appear on one list but not on the other.

Even where the Secretary of Homeland Security has determined to terminate or decided not to designate a country, DHS, through USCIS, may allow, on a case-by-case basis, a national from a country that is not on the list to be named as a beneficiary of an H–2A or H–2B petition based on a determination that it is in the U.S. interest for that individual noncitizen to be a beneficiary of an H–2 petition. Determination of such U.S. interest will take into account factors, including but not limited to: (1) Evidence from the petitioner demonstrating that a worker with the required skills is not available either from among U.S. workers or from among foreign workers from a country currently on the list described in 8 CFR 214.2(h)(5)(i)(F)(1)(i) (H–2A nonimmigrants) or 214.2(h)(6)(1)(E)(1) (H–2B nonimmigrants), as applicable; (2) evidence that the beneficiary has been admitted to the United States previously in H–2A or H–2B status; (3) the potential for abuse, fraud, or other harm to the integrity of the H–2A or H–2B visa program through the potential admission of a beneficiary from a country not currently on the list; and (4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(ii) and 8 CFR 214.2(h)(6)(i)(E)(2).

In December 2008, DHS published the first lists of eligible countries for the H–2A and H–2B Visa Programs in the **Federal Register**. These notices, ''Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H–2A Visa Program,'' and ''Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H–2B Visa Program,'' designated 28 countries whose nationals were eligible to participate in the H–2A and H–2B programs. *See* 73 FR 77043 (Dec. 18, 2008); 73 FR 77729 (Dec. 19, 2008). The notices ceased to have effect on January 17, 2010, and January 18, 2010, respectively. *See* 8 CFR 214.2(h)(5)(i)(F)(2) and 8 CFR 214.2(h)(6)(i)(E)(3). In implementing these regulatory provisions, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has published a series of notices on a regular basis. *See* 75 FR 2879 (Jan. 19, 2010) (adding 11 countries to both programs); 76 FR 2915 (Jan. 18, 2011) (removing one country from and adding 15 countries to both programs); 77 FR 2558 (Jan. 18, 2012) (adding five countries to both programs); 78 FR 4154 (Jan. 18, 2013) (adding one country to both programs); 79 FR 3214 (Jan.17, 2014) (adding four countries to both programs); 79 FR 74735 (Dec. 16, 2014) (adding five countries to both programs); 80 FR 72079 (Nov. 18, 2015) (removing one country from the H–2B program and adding 16 countries to both programs); 81 FR 74468 (Oct. 26, 2016) (adding one country to both programs); 83 FR 2646 (Jan. 18, 2018) (removing three countries from and adding one country to both programs); 84 FR 133 (Jan. 18, 2019) (removing two countries and adding 2 countries from both programs, removing one country from only the H–2B program, and adding one country to only the H–2A program); 85 FR 3067 (January 17, 2020) (remained unchanged); and 86 FR 2689 (Jan. 13, 2021) (removing two countries from both programs, removing one country from only the H–2A program, and adding one country to only the H–2B program).

Determination of Countries With Continued Eligibility

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 80 countries previously designated to participate in the H–2A program in the January 13,

[1] With respect to all references to ''country'' or ''countries'' in this document, it should be noted that the Taiwan Relations Act of 1979, Public Law 96–8, Section 4(b)(1), provides that ''[w]henever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.'' 22 U.S.C. 3303(b)(1). Accordingly, all references to ''country'' or ''countries'' in the regulations governing whether nationals of a country are eligible for H–2 program participation, 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1), are read to include Taiwan. This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

[2] An overstay is a nonimmigrant lawfully admitted to the United States for an authorized period, but who remained in the United States beyond his or her authorized period of admission. U.S. Customs and Border Protection (CBP) identifies two types of overstays: (1) Individuals for whom no departure was recorded (Suspected In-Country Overstays), and (2) individuals whose departure was recorded after their authorized period of admission expired (Out-of-Country Overstays). For purposes of this **Federal Register** Notice, DHS uses FY 2020 CBP nonimmigrant overstay data. including but not limited to H–2A and H–2B overstay data.

2021 notice continue to meet the regulatory standards for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H–2A program. Additionally, the Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 80 countries previously designated to participate in the H–2B program in the January 13, 2021 notice continue to meet the regulatory standards for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H–2B program. These determinations take into account how the regulatory factors identified above apply to each of these countries.

Countries No Longer Designated as Eligible

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that Moldova should no longer be designated as an H–2A eligible country because it no longer meets the regulatory standards identified above. Specifically, The Department of State (DOS) has evidence of agents recruiting applicants for H and J visas in Moldova collecting recruitment fees prohibited under U.S. law for certain visas including H–2A. The United States Government has also documented increasingly sophisticated levels of fraud by Moldovan nationals seeking to obtain H–2A visas with a photocopy of a bona fide unnamed petition and fraudulent work contracts. Considering these factors, and absent significant mitigating factors, the continued eligibility of Moldova to participate in the H–2A program no longer serves the U.S. interest. Therefore, the Secretary of Homeland Security, with the concurrence of the Secretary of State, is removing Moldova from the list of H–2A eligible countries. In a November 18, 2015 **Federal Register** Notice, the Secretary of Homeland Security, with the concurrence of the Secretary of State, removed Moldova from the list of eligible countries to participate the H–2B program. As such, Moldova will no longer be eligible to participate in either the H–2A and H–2B programs. However, Moldova's eligibility for the H–2A program remains effective until the prior designation expires on January 18, 2022.

Based on the foregoing analysis, DHS, with the concurrence of DOS, has removed one country from the H–2A eligible country list. Nonetheless, and as already noted, nationals of non-designated countries may still be beneficiaries of approved H–2A and H–2B petitions upon the request of the petitioner if USCIS determines, as a matter of discretion and on a case-by-case basis, that it is in the U.S. interest for the individual to be a beneficiary of such petition. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(ii) and 8 CFR 214.2(h)(6)(i)(E)(2). USCIS may favorably consider a beneficiary of an H–2A or H–2B petition who is not a national of a country included on the H–2A or H–2B eligibility list as serving the national interest, depending on the totality of the circumstances. Factors USCIS may consider include, among other things, whether a beneficiary has previously been admitted to the United States in H–2A or H–2B status and complied with the terms of the program. An additional factor for beneficiaries of H–2B petitions, although not necessarily determinative standing alone, would be whether the H–2B petition qualifies under section 1049 of the National Defense Authorization Act (NDAA) for FY 2018, Public Law 115–91, section 1045 of the NDAA for FY 2019, Public Law115–232, or section 9502 of the NDAA for FY 2021, Public Law 116–23. However, any ultimate determination of eligibility will be made according to all the relevant factors and evidence in each individual circumstance.

Countries Now Designated as Eligible

The Secretary of Homeland Security has also determined, with the concurrence of the Secretary of State, that Bosnia and Herzegovina, the Republic of Cyprus, the Dominican Republic (currently only eligible for H–2A), Haiti, Mauritius, and Saint Lucia should be designated as eligible countries to participate in the H–2A and H–2B non-immigrant visa programs because the participation of these countries is in the U.S. interest consistent with the regulations governing these programs.

Bosnia and Herzegovina consistently cooperates with accepting its nationals subject to a final order of removal. Additionally, DOS Consular Affairs does not have significant fraud concerns associated with visa applications submitted by nationals of Bosnia and Herzegovina. Bosnians historically participate in the Summer Work Travel and other exchange programs without presenting significant overstay, fraud, or abuse concerns. Additionally, nationals of Bosnia and Herzegovina do not present significant overstay concerns in other nonimmigrant visa categories. Inclusion of Bosnia and Herzegovina in the H–2A and H–2B programs would bolster the bilateral relationship, further contributing to the United States' goals of countering malign foreign influence and promoting Euro-Atlantic integration. As such, adding Bosnia and Herzegovina to the H–2A and H–2B eligible countries lists serves the U.S. interest.

Nationals of the Republic of Cyprus (ROC) do not present significant overstay concerns and are consistently compliant with the terms and conditions of visa categories. ROC also consistently cooperates on accepting its nationals subject to a final order of removal. Furthermore, DOS's recent validation studies have not identified significant fraud concerns with Cypriot travelers to and from the United States. Its strategic location, European Union membership, and support for democratic principles make the ROC an increasingly important partner for the United States. Adding the ROC to the H–2 eligible country lists would both demonstrate an immediate commitment to strengthening the bilateral relationship and help counter malign foreign influence. Additionally, ROC participation in the H–2A and H–2B non-immigrant visa programs further serves the U.S. interest and Embassy Nicosia's Integrated Country Strategy goals of engaging both the Greek and Turkish Cypriot communities and improving people-to-people contact across the island. Based on the foregoing reasons, adding the ROC to the H–2A and H–2B eligible countries lists serves the U.S. interest.

The Dominican Republic was removed from the list of H–2B eligible countries in a January 18, 2019 **Federal Register** Notice because in FY 2017, DHS estimated that nearly 30 percent of H–2B visa holders from the Dominican Republic overstayed their period of authorized stay. However, according to FY 2019 overstay rates in H–2B categories, DHS estimated that about five percent of nationals of the Dominican Republic overstayed their period of authorized stay. The Government of the Dominican Republic has a strong working relationship with DHS with respect to accepting its nationals subject to a final order of removal which proceeded uninterrupted throughout the COVID–19 pandemic. There have been no specific fraud trends observed in the H–2A and H–2B visa categories or other nonimmigrant visa categories. The Dominican Republic is a valued partner and works with the United States to advance U.S. interests in the region, such as combatting drug trafficking, protecting the security of U.S. citizens, and promoting democracy in the region. The Dominican Republic's location at the crossroads of transportation routes through the Caribbean, its status as a top

five overseas U.S. citizen tourist destination, the family connections for nearly two million U.S. citizens, and its close proximity to U.S. territory, make its continued development and stability vital to the interests of the United States as defined in the National Security Strategy. Therefore, adding the Dominican Republic to the H–2B eligible countries list serves the U.S. interest.

The Government of Haiti has been a valued partner, and consistently cooperated on accepting the return of its nationals subject to a final order of removal which proceeded almost uninterrupted throughout the COVID–19 pandemic, despite the political, environmental, and economic challenges facing Haiti. Adding Haiti back to H–2A and H–2B programs serves the U.S. interest and is consistent with the whole-of-government efforts to address the root causes of irregular migration and create lawful pathways for a safe, orderly, and legal migration.[3] Given the recent challenges (political instability, increasing gang-related violence, and a 7.2 magnitude earthquake) that have faced Haiti, DHS and DOS assess that the H–2A and H–2B programs will provide a stabilizing lawful channel for Haitian nationals seeking economic opportunities. Adding Haiti back to these programs will provide Haitians the opportunity not only to contribute to the U.S. economy, but also apply their earnings and technical experience to advance Haiti's reconstruction and stabilization. Sustainable development and the stability of Haiti is vital to the interests of the United States as a close partner and neighbor. While some factors, including nonimmigrant visa overstay and refusal rates that precipitated Haiti's removal from H–2A and H–2B programs in 2018 remain a concern, the foregoing favorable factors in the U.S. interest outweigh these concerns. DOS will continue to monitor visa applications for fraud trends and compliance with travel regulations. Based on the foregoing analysis, adding Haiti back to the H–2A and H–2B eligible countries lists serves the U.S. interest.

Nationals of Mauritius do not present significant visa overstay concerns and there are no outstanding issues with the repatriation of nationals of Mauritius with a final order of removal from the United States. Additionally, DOS conducted two separate validation studies on proper use of certain visa categories and the results indicated that over 99 percent of nationals of Mauritius complied with the terms and conditions of their visas. Additionally, DHS visa overstay data across all visa categories does not indicate a significant concern over the course of several years. Furthermore, eligibility for H–2A and H–2B nonimmigrant worker programs would bolster the bilateral and economic relationship. Therefore, adding Mauritius to the H–2A and H–2B eligible countries lists serves the U.S. interest.

Saint Lucia does not present significant overstay or fraud concerns across all nonimmigrant visas. Furthermore, adding Saint Lucia to both H–2A and H–2B programs is in the U.S. national interest. First, by providing economic opportunities to Saint Lucians in agriculture and seafood processing, inclusion will directly meet one of the key goals of the country's newly elected government, thereby bolstering bilateral relations at a time when the country is reexamining its foreign policy directions. Second, by affording Saint Lucian nationals greater familiarity with U.S. agriculture and aquaculture best practices, the country's designation for H–2A and H–2B participation by its nationals will increase the productivity of their businesses in these sectors upon their nationals' return from the United States, thus advancing U.S. economic development goals of strengthening entrepreneurship and diversifying the economy away from its current heavy reliance on tourism. Finally, Saint Lucia is consistently cooperative with the United States on accepting their nationals subject to a final order of removal. As such, adding Saint Lucia to both the H–2A and H–2B eligible countries lists serves the U.S. interest.

Designation of Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1) and 215(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1) and 1185(a)(1), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H–2A nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria
5. Barbados
6. Belgium
7. Bosnia and Herzegovina
8. Brazil
9. Brunei
10. Bulgaria
11. Canada
12. Chile
13. Colombia
14. Costa Rica
15. Croatia
16. Republic of Cyprus
17. Czech Republic
18. Denmark
19. Dominican Republic
20. Ecuador
21. El Salvador
22. Estonia
23. Fiji
24. Finland
25. France
26. Germany
27. Greece
28. Grenada
29. Guatemala
30. Haiti
31. Honduras
32. Hungary
33. Iceland
34. Ireland
35. Israel
36. Italy
37. Jamaica
38. Japan
39. Kiribati
40. Latvia
41. Liechtenstein
42. Lithuania
43. Luxembourg
44. Madagascar
45. Malta
46. Mauritius
47. Mexico
48. Monaco
49. Montenegro
50. Mozambique
51. Nauru
52. The Netherlands
53. New Zealand
54. Nicaragua
55. North Macedonia (formerly Macedonia)
56. Norway
57. Panama
58. Papua New Guinea
59. Paraguay
60. Peru
61. Poland
62. Portugal
63. Romania
64. Saint Lucia
65. San Marino
66. Serbia
67. Singapore
68. Slovakia
69. Slovenia
70. Solomon Islands
71. South Africa
72. South Korea
73. Spain
74. St. Vincent and the Grenadines
75. Sweden
76. Switzerland
77. Taiwan
78. Thailand
79. Timor-Leste
80. Turkey
81. Tuvalu
82. Ukraine
83. United Kingdom

[3] E.O. 14010 of Feb 2, 2021. *https://www.federalregister.gov/documents/2021/02/05/2021-02561/creating-a-comprehensive-regional-framework-to-address-the-causes-of-migration-to-manage-migration.*

84. Uruguay
85. Vanuatu

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1) and 215(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1) and 1185(a)(1)), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H–2B nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria
5. Barbados
6. Belgium
7. Bosnia and Herzegovina
8. Brazil
9. Brunei
10. Bulgaria
11. Canada
12. Chile
13. Colombia
14. Costa Rica
15. Croatia
16. Republic of Cyprus
17. Czech Republic
18. Denmark
19. Dominican Republic
20. Ecuador
21. El Salvador
22. Estonia
23. Fiji
24. Finland
25. France
26. Germany
27. Greece
28. Grenada
29. Guatemala
30. Haiti
31. Honduras
32. Hungary
33. Iceland
34. Ireland
35. Israel
36. Italy
37. Jamaica
38. Japan
39. Kiribati
40. Latvia
41. Liechtenstein
42. Lithuania
43. Luxembourg
44. Madagascar
45. Malta
46. Mauritius
47. Mexico
48. Monaco
49. Mongolia
50. Montenegro
51. Mozambique
52. Nauru
53. The Netherlands
54. New Zealand
55. Nicaragua
56. North Macedonia (formerly Macedonia)
57. Norway
58. Panama
59. Papua New Guinea
60. Peru
61. The Philippines
62. Poland
63. Portugal
64. Romania
65. Saint Lucia
66. San Marino
67. Serbia
68. Singapore
69. Slovakia
70. Slovenia
71. Solomon Islands
72. South Africa
73. South Korea
74. Spain
75. St. Vincent and the Grenadines
76. Sweden
77. Switzerland
78. Taiwan
79. Thailand
80. Timor-Leste
81. Turkey
82. Tuvalu
83. Ukraine
84. United Kingdom
85. Uruguay
86. Vanuatu

This notice does not affect the current status of noncitizens who at the time of publication of this notice hold valid H–2A or H–2B nonimmigrant status. Noncitizens currently holding such status, however, will be affected by this notice should they seek an extension of stay in the H–2 classification, or a change of status from one H–2 status to another, for employment on or after the effective date of this notice. Similarly, noncitizens holding nonimmigrant status other than H–2 are not affected by this notice unless they seek a change of status to H–2.

Nothing in this notice limits the authority of the Secretary of Homeland Security or his designee or any other federal agency to invoke against any foreign country or its nationals any other remedy, penalty, or enforcement action available by law.

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2021–24534 Filed 11–9–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: TSA Claims Application

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0039, that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of information from claimants in order to thoroughly examine and resolve tort claims against the agency.

DATES: Send your comments by January 10, 2022.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov upon its submission to OMB.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0039; TSA Claims Application allows the agency to collect information from claimants in order to thoroughly examine and resolve tort claims against the agency. TSA receives approximately 750 tort claims per month arising from airport screening activities and other circumstances, including motor vehicle accidents and employee loss. The Federal Tort Claims Act (28 U.S.C. 1346(b), 1402(b), 2401(b), 2671–2680) is

the authority under which the TSA Claims, Outreach, and Debt Branch adjudicates tort claims.

The data is collected whenever an individual believes s/he has experienced property loss or damage, a personal injury, or other damages due to the negligence or wrongful act or omission of a TSA employee, and decides to file a Federal tort claim against TSA. Submission of a claim is entirely voluntary and initiated by individuals. The claimants (or respondents) to this collection are typically the traveling public. Currently, claimants file a claim by submitting to TSA a Standard Form 95 (SF–95), which has been approved under OMB control number 1105–0008. Because TSA requires further clarifying information, claimants are asked to complete a Supplemental Information page added to the SF–95. If TSA determines payment is warranted, TSA will send the claimant a form requesting banking information (routing and account numbers) in order to direct payment to the claimant. This form has been approved under OMB control number 1652–0039.

Claim instructions and forms are available through the TSA website at *https://www.tsa.gov.* Claimants must download these forms and mail or fax them to TSA. On the Supplemental Information page, claimants are asked to provide additional claim information including: (1) Email address, (2) airport, (3) location of incident within the airport, (4) complete travel itinerary, (5) whether baggage was delayed by the airline, (6) why they believe TSA was negligent, (7) whether they used a third-party baggage service, (8) whether they were traveling under military orders, and (9) whether they submitted claims with the airline or insurance companies.

If TSA determines payment is warranted, TSA sends the claimant a form requesting: (1) Claimant signature, (2) banking information, and (3) Social Security number (required by the U.S. Treasury for all Government payments to the public pursuant to 31 U.S.C. 3325).

Under the current system of claims submitted by mail or fax, TSA estimates there will be approximately 9,000 respondents on an annual basis, for a total annual hour burden of 4,708 hours.

Dated: November 4, 2021.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2021–24526 Filed 11–9–21; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7034–N–65]

30-Day Notice of Proposed Information Collection: Request for Prepayment of Section 202 or 202/8 Direct Loan Project, OMB Control No.: 2502–0554

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* December 10, 2021.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/Start Printed Page 15501PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number).

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 2, 2021, at 86 FR 35314.

A. Overview of Information Collection

Title of Information Collection: Request for Prepayment of Section 202 or 202/8 Project.

OMB Approval Number: 2502–0554.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: HUD–9808.

Description of the need for the information and proposed use: The Owner must execute the Section 202 Prepayment Use Agreement provided as Attachment 1 to this Notice that will ensure the continued operation of the project until at least 20 years following the maturity date of the original loan under terms at least as advantageous to existing and future tenants as the terms required by the original loan agreement. The Use Agreement must be executed by the Owner and the Department and recorded upon HUD's approval of the prepayment transaction.

Respondents: Business, not for profit institutions.

Estimated Number of Respondents: 1,566.

Estimated Number of Responses: 1,566.

Frequency of Response: On occasion.

Average Hours per Response: 1 hours.

Total Estimated Burdens: 1,566.

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.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

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. 3507.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2021–24556 Filed 11–9–21; 8:45 am]

BILLING CODE 4210–67–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1574 (Preliminary)]

Superabsorbent Polymers From South Korea; Institution of Anti-Dumping Duty Investigation and Scheduling of Preliminary Phase Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping duty investigation No. 731–TA–1574 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of superabsorbent polymers from South Korea, provided for in subheading 3906.90.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by December 17, 2021. The Commission's views must be transmitted to Commerce within five business days thereafter, or by December 27, 2021.

DATES: November 2, 2021.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on November 2, 2021, by the Ad Hoc Coalition of American SAP Producers, whose members include BASF Corporation, Florham Park, New Jersey; Evonik Superabsorber LLC, Greensboro, North Carolina; and Nippon Shokubai America Industries, Inc., Pasadena, Texas.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.— In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission is conducting the staff conference through video conferencing on Tuesday, November 23, 2021. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before Friday, November 19, 2021. Please provide an email address for each conference participant in the email. Information on conference procedures will be provided separately and guidance on joining the video conference will be available on the Commission's Daily Calendar. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*. No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 29, 2021, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on Monday, November 22, 2021. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this investigation must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or related investigations or

reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 4, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–24535 Filed 11–9–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1067 (Remand)]

Certain Road Milling Machines and Components Thereof; Issuance of a Modified Limited Exclusion Order and Two Modified Cease and Desist Orders; Termination of Remand Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, following a remand from the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit''), the U.S. International Trade Commission has determined to issue a modified limited exclusion order (''LEO'') and modified cease and desist orders (''CDOs'') directed against respondents Caterpillar Paving Products, Inc. and Caterpillar Inc., respectively, and their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission has terminated this investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 25, 2017, based on a complaint filed by Wirtgen America, Inc. of Antioch, Tennessee (''Wirtgen'' or ''Complainant''). 82 FR 40595–96 (Aug. 25, 2017). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 7,530,641 (''the '641 patent''); 7,828,309 (''the '309 patent''); 9,624,628 (''the '628 patent''); 9,644,340 (''the '340 patent''); and 9,656,530 (''the '530 patent''). The notice of investigation named as respondents Caterpillar Prodotti Stradali S.r.L. of Minerbio BO, Italy; Caterpillar Americas CV of Geneva, Switzerland; Caterpillar Paving Products, Inc. of Minneapolis, Minnesota; and Caterpillar Inc., of Peoria, Illinois (collectively, ''Caterpillar,'' or ''Respondents'') and Caterpillar Bitelli SpA of Minerbio BO, Italy. The Commission's Office of Unfair Import Investigations was named as a party, but later withdrew from the investigation. Commission Investigative Staff's Notice of Non-Participation (Oct. 31, 2017).

On April 27, 2018, the Commission terminated the investigation as to the '628 patent based on withdrawal of the complaint allegations as to that patent. *See* Order No. 30 (Mar. 27, 2018), *unreviewed by* Notice (Apr. 27, 2018). On January 18, 2018, the Commission terminated respondent Caterpillar Bitelli SpA based on the withdrawal of the complaint as to that respondent. *See* Order No. 11 (Dec. 19, 2017), *unreviewed by* Notice (Jan. 18, 2018).

On October 1, 2018, the presiding administrative law judge (''ALJ'') issued a final initial determination (''ID'') finding that a violation of section 337 occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain road milling machines and components thereof that infringed the asserted claims of the '309 and '530 patents, but found no violation with respect to the '641 and '340 patents. *See* ID, Cover.

On April 17, 2019, the Commission determined to review in part the final ID. *See* 84 FR 16882–84 (Apr. 23, 2019). In particular, the Commission determined to review the final ID's findings and analysis pertaining to the obviousness determinations with regard to claims 26, 35, and 36 of the '309 patent and, on review, found those claims invalid as obvious under 35 U.S.C. 103. *Id.* at 16883. The Commission affirmed the final ID's finding that asserted claims 10 and 29 of the '309 Patent are not invalid. *Id.* at 16883. The Commission determined not to review any of the final ID's finding relating to the '340, '641, and '530 patents. *See id.*

On July 18, 2019, the Commission found a violation of section 337 as to the '309 and '530 patents and determined that the appropriate form of relief in this investigation is: (1) An LEO prohibiting the unlicensed entry of infringing road-milling machines and components thereof covered by one or more of claim 29 of the '309 patent or claims 2, 5, 16, or 23 of the '530 patent that are manufactured abroad for or on behalf of, or imported by or on behalf of, any of the Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; and (2) CDOs directed against respondents Caterpillar Paving Products, Inc. and Caterpillar Inc., and their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. *See* 84 FR 35690–91 (Jul. 24, 2019). The Commission determined that the remedial orders ''should include an exception for service and repair.'' Comm'n Op. at 14, 23 (July 18, 2019).

Both Complainant and Respondents timely appealed the Commission's final determination with the United States Court of Appeals for the Federal Circuit. On October 21, 2019, the Court consolidated the two appeals. *See Caterpillar* v. *ITC* (2019–1911, –2445), Court Order at 2 (October 21, 2019).

On March 15, 2021, the Court issued a non-precedential decision affirming the Commission's determination of a Section 337 violation with respect to the '530 and '309 patents. *Caterpillar Prodotti Stradali S.R.L.* v. *International Trade Commission,* 2021 WL 960759 (Fed. Cir. 2021). The Court also reversed and vacated the Commission's finding, adopted from the final ID, that Wirtgen failed to prove the knowledge required for inducement, and remanded as to the '641 patent for further proceedings. *Id.* at *5. The Court affirmed the Commission's finding, adopted from the final ID, that Wirtgen had not shown use in the United States of any imported PM300 Series machine in a way that would infringe the asserted claims of the '641 patent. *Id.* at *6. The Court's mandate issued on May 6, 2021, returning jurisdiction to the Commission.

Pursuant to the Court's remand, the Commission issued a Notice and Order

requesting written submissions from the parties to address the specific further proceedings to be conducted on remand. Notice of a Commission Request for Written Submissions Pursuant to a Court Remand (June 7, 2021) (''Commission Notice''). On June 17, 2021, Wirtgen and Caterpillar filed opening submissions in response to the Commission's notice. On June 22, 2021, Wirtgen and Caterpillar filed replies to the opening submissions.

Having examined the record in this investigation, including the parties' submissions filed in response to the Commission's Notice and Order, and consistent with the judgment of the Court, the Commission has determined to modify (1) the LEO issued in this investigation to cover, in addition to its existing scope, claims 11 or 17 of the '641 patent; and (2) the CDOs issued against Caterpillar, Inc. of Peoria, IL and Caterpillar Paving Products, Inc. of Minneapolis, MN to cover, in addition to their existing scope, claims 11 or 17 of the '641 patent.

The Commission has terminated this investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 4, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–24545 Filed 11–9–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1234]

Certain Radio Frequency Identification (''RFID'') Products, Components Thereof, and Products Containing the Same; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 23) terminating the investigation on the basis of settlement. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket information system (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the present investigation on December 29, 2020, based on a complaint and supplement thereto filed by Amtech Systems LLC of Albuquerque, New Mexico (''Complainant''). 85 FR 85660–61 (Dec. 29, 2020). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation, sale for importation, and sale in the United States after importation of certain RFID products, components thereof, and products containing the same that allegedly infringe certain claims of U.S. Patent No. 7,518,532; U.S. Patent No. 7,772,977; U.S. Patent No. 8,237,565; U.S. Patent No. 7,548,153; U.S. Patent No. 8,427,279; and U.S. Patent No. 10,083,329. *Id.* The complaint further alleged that an industry in the United States exists, or is in the process of being established, as required by section 337. *Id.* The notice of investigation named Kapsch TrafficCom AG of Vienna, Austria; Kapsch TrafficCom B.V. of Breda Noord-Brabant, Netherlands; Kapsch TrafficCom Canada, Inc. of Mississauga, Canada; Kapsch TrafficCom Holding Corp. of McLean, Virginia; Kapsch TrafficCom Holding II US Corp. of McLean, Virginia; Kapsch TrafficCom IVHS, Inc. of McLean, Virginia; Kapsch TrafficCom USA, Inc. of McLean, Virginia; Kapsch TrafficCom Inc. of McLean, Virginia; and Kapsch TrafficCom Services USA, Inc of McLean, Virginia. *Id.* at 855661. The Office of Unfair Import Investigations was also named as a party to this investigation. *Id.*

On September 30, 2021, the private parties filed a joint unopposed motion to terminate the investigation on the basis of settlement. The parties represented that ''there are no other agreements, written or oral, express or implied, between them concerning the subject matter of this proceeding.'' Mot. at 1.

On October 19, 2021, the presiding administrative law judge issued Order No. 23, granting the joint motion to terminate the investigation on the basis of settlement. The ID found that the motion complies with the requirements of Commission Rule 210.21 (19 CFR 210.21(a), (b)) and that there is no evidence that indicates that termination would adversely affect the public interest. No party filed a petition for review of the ID.

The Commission has determined not to review this ID. Accordingly, the investigation is terminated.

The Commission vote for this determination took place on November 4, 2021.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 5, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–24600 Filed 11–9–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1286]

Certain Oil-Vaping Cartridges, Components Thereof, and Products Containing the Same; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 4, 2021, under section 337 of the Tariff Act of 1930, as amended, on behalf of Shenzhen Smoore Technology Limited of China. Supplements were filed on October 8, 2021, and October 21, 2021. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain oil-vaping cartridges, components thereof, and products

containing the same by reason of infringement of: (1) Certain claims of Patent No. 10,357,623 (''the '623 patent''); U.S. Patent No. 10,791,763 (''the '763 patent''); U.S. Patent No. 10,791,762 (''the '762 patent''); and (2) U.S. Registered Trademark No. 5,633,060 (''the '060 mark''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2020).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 3, 2021, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsections (a)(1)(B) and (C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–3, 5, and 6 of the '623 patent; claims 1, 2, and 7 of the '762 patent; claims 1 and 11 of the '763 patent; and the '060 mark, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''oil-vaping cartridges having a liquid reservoir for containing a vaporizable oil;''

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Shenzhen Smoore Technology Limited, Block 16, Dongcai Industry Park, Gushu Village, Bao'an District, Shenzhen, China.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

BBTank USA, LLC, 213 Secor Road #583, Lambertville, MI 48144.

Glo Extracts, 6230 Wilshire Blvd., Los Angeles, CA 90048.

BulkCarts.com, 42010 Koppernick Road, Ste 114, Canton, MI 48187.

Greenwave Naturals LLC, 11800 Silkwood Cove, Austin, TX 78739.

BoldCarts.com, 1810 W 4th St., Tempe, AZ 85281.

Bold Crafts, Inc., 420 Goddard Ave., Irvine, CA 92618.

Blinc Group Holdings, LLC, 40 Fulton Street, 6 Floor, New York, NY 10038.

Jonathan Ray Carfield, d/b/a AlderEgo Wholesale, AlderEgo Holdings, Inc. and AlderEgo Group, Limited a/k/a AVD Holdings Limited, Apt. 2702, Unit 1, Block A, Tianyuan Building 5, Gangxia Center, Futian District, Shenzhen 518016 Guangdong, China.

Hanna Carfield, PO Box 7010, Tacoma, Washington 98417.

Next Level Ventures, LLC, 3131 Western Ave., Ste 325, Seattle, WA 98121.

Advanced Vapor Devices, LLC, 1230 Long Beach Ave., Los Angeles, CA 90021.

avd710.com, 3131 Western Ave., Suite 325, Seattle, WA 98121.

AlderEgo Group Limited (''AEG''), Room 21, Unit A, 11F, Tin Wui Industrial Building, No. 3 Hing Wong Street, Tuen Mun, N.T., Hong Kong.

A&A Global Imports, Inc. d/b/a Marijuana Packaging, 3359 East 50th Street, Vernon, CA 90058.

Bulk Natural, LLC d/b/a True Terpenes, 524 E Burnside Street, Suite 600, Portland, OR 97214.

Brand King, LLC, 717 Del Paso Road, Sacramento, CA 95834.

ZTCSMOKE USA Inc., 599B West John Sims Pkwy., Niceville, FL 35278.

headcandysmokeshop.com, 200–2288 No. 5 Road, Richmond, BC V6X 2T1 Canada.

Head Candy Enterprise Ltd., 121–618 East Kent Ave. South, Vancouver, BC V5X 0B1, Canada.

Green Tank Technologies Corp., 102–135 Liberty Street, Toronto, ON, M6K 1A7, Canada.

Cannary Packaging Inc., 9–1415 Hunter Court Kelowna BC, V1X 6E6, Canada.

Cannary LA, 2901 Gardena Avenue, Signal Hill, CA 90755.

dcalchemy.com, 10645 N Tatum Blvd., Suite 200, Phoenix, AZ 85028.

DC Alchemy, LLC, 10645 N Tatum Blvd., Suite 200, Phoenix, AZ 85028.

Cartridgesforsale.com, P.O. Box 971024, Ypsilanti, MI 48197.

HW Supply, LLC, 324 Airport Industrial Dr., Ypsilanti, MI, 48198.

International Vapor Group, LLC, 14300 Commerce Way, Miami Lakes, FL 33016.

Obsidian Supply, Inc., 16 Technology Dr. #103, Irvine, CA 92618.

Ygreeninc.com, 671 Brea Canyon Road, Suite-2, Walnut, CA 91789.

Ygreen Inc., 671 Brea Canyon Road, Suite-2, Walnut, CA 91789.

Atmos Nation LLC, 4800 SW 51st Street, Suite 106, Davie, FL 33314.

shopbvv.com, 1251 Frontenac Road, Suite 150, Naperville, IL 60563.

Best Value Vacs, LLC, 1251 Frontenac Road, Suite 150, Naperville, IL 60563.

Royalsupplywholesale.com, 5432 Geary Blvd., Suite 321, San Francisco, CA 94121.

Customcanabisbranding.com, 5432 Geary Blvd., Ste. 321, San Francisco, CA 94121.

CLK Global, Inc., 5432 Geary Blvd., Ste. 321, San Francisco, CA 94121.

iKrusher.com, 11818 Clark Street, Arcadia, CA 91006.

The Calico Group Inc., 2801 Via Fortuna Suite 675, Austin, TX 78746.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the

date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 4, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–24516 Filed 11–9–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

DATES: The APB will meet in open session from 8:30 a.m. until 6:00 p.m. on December 8, 2021.

ADDRESSES: The meeting will take place at the Sheraton Atlanta Hotel, 165 Courtland Street NE, Atlanta, Georgia 30303, telephone 404–659–6500. Due to COVID–19 safety precautions that limit meeting space accommodations the CJIS Division is offering a blended participation option that allows for a limited number of individuals to participate in person and additional individuals to participate via a telephone bridge line. The public will be permitted to provide comments and/or questions related to matters of the APB prior to the meeting. In-person gallery participation will be limited to the first 75 external participants who register to attend in person. Additional participants may also participate via a telephone bridge line. Please see details in the supplemental information.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Ms. Amber Mann, Management and Program Analyst, Advisory Process Management Office, Global Law Enforcement Support Section; 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; email *agmu@leo.gov,* telephone 304–625–7383.

SUPPLEMENTARY INFORMATION: The FBI CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Law Enforcement Enterprise Portal, National Crime Information Center, Next Generation Identification, National Instant Criminal Background Check System, National Data Exchange System, and Uniform Crime Reporting.

The meeting will be conducted with a blended participation option. The public may participate as follows: Public registrations will be processed on a first-come, first-served basis. The first 75 individuals to register will be afforded the opportunity to participate in person and are required to check-in at the meeting registration desk. Any additional registrants will be provided with a phone bridge number to participate in a listen-only mode.

Registrations will be taken via email to *agmu@leo.gov.* Information regarding the phone access will be provided prior to the meeting to all registered individuals. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Designated Federal Officer (DFO).

Any member of the public may file a written statement with the APB. Written comments shall be focused on the APB's current issues under discussion and may not be repetitive of previously submitted written statements. Written comments should be provided to Mr. Nicky J. Megna, DFO, at least seven (7) days in advance of the meeting so the comments may be made available to the APB members for their consideration prior to the meeting.

Individuals requiring special accommodations should contact Mr. Megna by no later than December 3, 2021. Personal registration information will be made publicly available through the minutes for the meeting published on the FACA website.

Nicky J. Megna,

CJIS Designated Federal Officer, Criminal Justice Information, Services Division, Federal Bureau of Investigation.

[FR Doc. 2021–24546 Filed 11–9–21; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0024]

Variance Regulations; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to obtain OMB approval for the information collection requirements contained in the Standards on Variance and Other Relief; Variances and Other Relief; and Limitation, Variations, Tolerances or Exemptions. These statutory and regulatory provisions specify the requirements for submitting applications to OSHA for temporary, experimental, permanent, and national defense variances.

DATES: Comments must be submitted (postmarked, sent or received) by January 10, 2022.

ADDRESSES: Submit comments by any of the following methods:

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

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202)

693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2009–0024). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the correct format, reporting burden (time and costs) is minimal, collection instruments are clearly understandable, and OSHA's estimate of the information collection burden is correct. The OSH Act (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Sections 6(b)6(A), 6(b)6(B), 6(b)6(C), 6(d), and 16 of the OSH Act, and 29 CFR 1905.10, 1905.11, and 1905.12, specify the procedures that employers must follow to apply for a variance from the requirements of an OSHA standard. OSHA uses the information collected under these procedures to: (1) Evaluate the employer's claim that the alternative means of compliance would provide affected employees with the requisite level of health and safety protection; (2) assess the technical feasibility of the alternative means of compliance; (3) determine that the employer properly notified affected employees of the variance application and their right to a hearing; and (4) verify that the application contains the administrative information required by the applicable variance regulation.

Currently, no specific forms are available for preparing variance applications and other documents that may accompany variance applications. OSHA is developing new forms to assist employers in preparing variance applications that comply with the information collection requirements contained in the OSH Act and variance regulations.

II. Special Issues for Comment

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

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

III. Proposed Actions

OSHA is requesting OMB approval of the information collection (paperwork) requirements contained in Sections 6(b)6(A), 6(b)6(B), 6(b)6(C), 6(d), and 16 of the Occupational Safety and Health Act of 1970, and 29 CFR 1905.10, 1905.11, and 1905.12. These statutory and regulatory provisions specify the requirements for submitting applications to OSHA for temporary, experimental, permanent, and national defense variances.

OSHA is also requesting OMB approval to develop and use variance application forms for the four types of variances specified by the OSH Act and variance regulations. The four types of variances are: Temporary variances (Section 6(b)(6)(A) of the Act; 29 U.S.C. 655; 29 CFR 1905.10); experimental variances (Section 6(b)(6)(C) of the Act; 29 U.S.C. 655); permanent variances (Section 6(d) of the Act; 29 U.S.C. 655; 29 CFR 1905.11); and national defense variances (Section 16 of the Act; 29 U.S.C. 665; 29 CFR 1905.12). The variance regulations specify the information that employers must provide when requesting one of these variances. The variance application forms would organize and clarify the information collection requirements for each type of variance by specifying the requirements in comprehensible language, and providing explanatory material. Employers applying for a variance could download and complete the applicable form from OSHA's website. The forms would expedite the application process for employers, and ensure that the information on the application is complete and accurate.

There are no adjustments or program changes associated with this ICR. The agency is proposing to retain the previous burden hour estimate of 366 hours. The agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to approve these information collection requirements and variance application forms.

Type of Review: Extension of a currently approved collection.

Title: Variance Regulations (29 CFR 1905.10, 1905.11, and 1905.12).

OMB Control Number: 1218–0265.

Affected Public: Businesses or other for-profits and not-for-profit institutions.

Frequency of Responses: On occasion.

Number of Respondents: 48.

Total Responses: 48.

Average Time per Response: Varies.

Estimated Total Burden Hours: 366.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0024). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website.

All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on October 28, 2021.

James S. Frederick,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021–24055 Filed 11–9–21; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

44th Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), National Foundation of the Arts and the Humanities (NFAH).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Museum and Library Services Board will meet to advise the Director of the Institute of Museum and Library Services (IMLS) with respect to duties, powers, and authority of IMLS relating to museum, library, and information services, as well as coordination of activities for the improvement of these services.

Dates and Time: The meeting will be held on December 10, 2021, from 11:30 a.m. Eastern Time until adjourned.

Place: The meeting will convene virtually. In order to enhance openness and public participation, virtual meeting and audio conference technology will be used during the meeting. Instructions will be sent to all public registrants.

FOR FURTHER INFORMATION CONTACT: Katherine Maas, Chief of Staff and Alternate Designated Federal Officer, Institute of Museum and Library Services, Suite 4000, 955 L'Enfant Plaza North SW, Washington, DC 20024; (202) 653–4798; *kmaas@imls.gov* (*mailto:kmaas@imls.gov*).

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is meeting pursuant to the National Museum and Library Service Act, 20 U.S.C. 9105a, and the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. app.

The 44th Meeting of the National Museum and Library Services Board, which is open to the public, will convene online at 11:30 a.m. Eastern Time on December 10, 2021.

The agenda for the 44th Meeting of the National Museum and Library Services Board will be as follows:

I. Call to Order
II. Approval of Minutes of the 43rd Meeting
III. Board Program: Information Literacy
IV. Director's Welcome and Update
V. Governmental Engagement and Legislative Update
VI. Financial Update
VII. Office of the Chief Information Officer Update
VIII. Office of Museum Services Update
IX. Office of Library Services Update
X. Office of Research and Evaluation Update

If you wish to attend the virtual public session of the meeting, please inform IMLS as soon as possible, but no later than close of business on December 8, 2021, by contacting Katherine Maas at *kmaas@imls.gov* (*mailto:kmaas@imls.gov*). Virtual meeting and audio instructions will be sent to all public registrants. Please provide notice of any special needs or accommodations by November 24, 2021.

Dated: November 5, 2021.

Brianna Ingram,

Paralegal Specialist.

[FR Doc. 2021–24576 Filed 11–9–21; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: Measures That Matter—Assessing Public Libraries' Activities Related to Workforce Development

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This Notice proposes the clearance of the *Measures that Matter—Assessing Public Libraries' Activities Related to Workforce Development.* A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 10, 2021.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particularly interested in comments that help the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

FOR FURTHER INFORMATION CONTACT: Matthew Birnbaum, Supervisory Social Scientist, Office of Research and Evaluation, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington DC 20024–2135. Dr. Birnbaum can be reached by telephone at 202–653–4760 or by email at *mbirnbaum@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

Current Actions: This Notice proposes the clearance of *Measures that Matter—Assessing Public Libraries' Activities Related to Workforce Development.* The 60-day Notice was published in the **Federal Register** on August 20, 2020 (85 FR 51496). The agency received two comments, each requesting copies of the data collection instrument. The agency provided the requested document on November 4, 2021.

IMLS, in partnership with the Chief Officers of State Library Associations (COSLA), launched *Measures that Matter* in 2016, an initiative for coordinating conversations about existing approaches to gathering and using data to improve alignment of public library services, programs, and collections with communities' needs and emerging opportunities. An outgrowth of this effort, this proposed assessment will study the contributions of public library-based workforce development activities including their coordinated efforts to deliver and measure these services across outlets and with community partners. This proposed investigation will identify a purposive sample of public libraries and complete case studies about them using a mix of research methods involving reviews of secondary and administrative data and interviews with library staff and their respective workforce development partners. These case studies will inform future opportunities for IMLS to examine in greater detail the ways in which public libraries are situated within a larger workforce development ecosystem.

Agency: Institute of Museum and Library Services.

Title: Measures that Matter—Assessing Public Libraries' Activities Related to Workforce Development.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Affected Public: Public Libraries, Local Workforce and Business Development Organizations, Local Civic Leaders, Local Governments.

Total Number of Respondents: 130.

Frequency of Response: Once per request.

Average Minutes per Response: 45 minutes.

Total Burden Hours: 97.5.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Cost Burden: $2,663.93.

Total Annual Federal Costs: $170,260.

Dated: November 5, 2021.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2021–24570 Filed 11–9–21; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0084]

Information Collection: Facility Security Clearance and Safeguarding of National Security Information and Restricted Data

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.''

DATES: Submit comments by December 10, 2021. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0084 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2021–0084.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The supporting statement and NRC Form 405F are available in ADAMS under Accession Nos. ML21300A385 and ML21197A190.

• *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at *pdr.resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

• *NRC's Clearance Officer:* A copy of the collection of information and related

instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 23, 2021, 86 FR 47165.

1. *The title of the information collection:* Part 95 of title 10 of the *Code of Federal Regulations,* ''Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.''

2. *OMB approval number:* 3150–0047.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* NRC Form 405F.

5. *How often the collection is required or requested:* When new facility clearance requests are received, existing facility clearances are terminated, when respondents make changes reportable under the rule, including a mandatory submission every 5 years.

6. *Who will be required or asked to respond:* NRC-regulated facilities and their contractors who require access to, and possession of NRC classified information.

7. *The estimated number of annual responses:* 172 (144 reporting + 28 Recordkeepers).

8. *The estimated number of annual respondents:* 28.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 664 (490 Reporting + 174 Recordkeeping).

10. *Abstract:* The NRC-regulated facilities and their contractors who are authorized to access and possess classified matter are required to provide information and maintain records to ensure an adequate level of protection is provided to NRC classified information and material.

Dated: November 4, 2021.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2021–24524 Filed 11–9–21; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93522; File No. SR–LCH SA–2021–003]

Self-Regulatory Organizations; LCH SA; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees on Extension of Eligible Collateral

November 4, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2021, Banque Centrale de Compensation, which conducts business under the name LCH SA (''LCH SA''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (''Proposed Rule Change'') described in Items I, II and III below, which Items have been prepared primarily by LCH SA. LCH SA filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder, so that the proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

(a) Banque Centrale de Compensation, which conducts business under the name LCH SA, is proposing to update the current fee grid to be applied by LCH SA for the new scope of eligible securities collateral to be extended to government bonds issued by the following states and denominated in their domestic currencies: Australia, Canada, Denmark, Japan, Norway, Sweden and Switzerland[5] (the ''Proposed Rule Change'').

The text of the Proposed Rule Change has been annexed [sic] hereto as Exhibit 5.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, LCH SA 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. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

LCH SA charges fees on collateral posted by its clearing members to cover the CCP margin requirements. The level of fees is defined based on a combination of various factors such as operational costs to manage a given type of collateral, ability to generate liquidity from a given type of collateral (and thus the associated impact on the CCP

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Eligible Collateral and Liquidity Risk Management, Exchange Act Release No. 34–93176 (Sept. 29, 2021); 86 FR 55061 (Oct. 5, 2021). File No. SR–LCH SA–2021–002.

liquidity profile) and commercial considerations such as competitive landscape. The extension of eligible collateral addresses members' demand for more flexibility and consistency with industry standards and market practices. This extension was designed in coherence with the clearing services offered by LCH SA, the profile of the membership and the risk policies, regulatory constraints and operational capacity LCH SA operates under.

As per CDSClear current collateral fee grid (copied below), LCH SA already charges different fees depending on the type of securities, the way that such securities are deposited at the CCP as well as the type of activity these cover. For instance, for securities deposited under Full Title Transfer (FTT) by a clearing Member to meet the margin liabilities of its House account (self-clearing activity), LCH SA charges an 11bps fee on the notional of government bond securities whereas the charge is 13bps for Agencies and Supranational securities.[6] Similarly, LCH SA charges a 10bps fee for both Government Bonds and Agencies/Supranational securities deposited under FTT by a clearing member covering its Clients' accounts activity.

	Securities	Denominated in	House			Client
			Triparty (bps)	FTT (bps)	Pledge (bps)	(bps)
Government Securities (as listed in Haircut Schedule).	France	EUR	9.5	11	15	10
	Germany	EUR	9.5	11	15	10
	Belgium	EUR	9.5	11	15	10
	Netherlands	EUR	9.5	11	15	10
	Italy	EUR	9.5	11	15	10
	Portugal	EUR	9.5	11	15	10
	Spain	EUR	9.5	11	15	10
	Austria	EUR	9.5	11	15	10
	Finland	EUR	9.5	11	15	10
	USA	USD	9.5	11	15	10
	UK	GBP	9.5	11	15	10
Supranationals & Agencies	EFSB	EUR	9.5	13	15	10
	ESM	EUR	9.5	13	15	10
	EIB	EUR	9.5	13	15	10
	EU	EUR	9.5	13	15	10
	IBRD	EUR	9.5	13	15	10
	KfW	EUR	9.5	13	15	10
	Rentenbank	EUR	9.5	13	15	10
Equities	*As listed in Haircut Schedule.*	EUR	N/A	13	N/A	N/A

From November 1st, 2021, LCH SA is proposing to extend the scope of instruments eligible as collateral to the government bonds issued by the following countries and denominated in their domestic currencies: Australia, Canada, Denmark, Japan, Norway, Sweden and Switzerland.

As such, LCH SA needs to update its existing non-cash collateral fee grid for both House and Client clearing activities. As mentioned before, various factors are taken into consideration when defining the fee to be charged for a given security. For this initiative, LCH SA has considered a combination of elements such as the impossibility to use these securities as collateral with the European Central Bank (ECB) for liquidity management purposes, the relative appetite of the membership for this new collateral and the operational costs and constraints that the management of those securities create for the CCP (incl. their impact on LCH SA Liquidity Coverage Ratio).

As specified in the fee grid attached [sic] as Exhibit 5, the purpose of the Proposed Rule Change is to define the fee to be charged for the new scope of eligible collateral (13bps for House and 10 bps for Client clearing activities). The difference between the fee charged for House versus Client collateral is mainly driven by commercial reasons in consultation with CDSClear clearing members. Client clearing of CDS is reasonably recent in Europe. Given the limited scope of CDS instruments and categories of buy-side counterparties included in the scope of the European Clearing Obligation for CDS, LCH SA believes that expanding the list of eligible collateral as well as setting a more attractive collateral fee for Clients of the CDSClear service will incentivise further buy-side firms to clear a bigger share of their Credit Derivatives portfolio.

No amendments to the LCH SA CDS Clearing Rules are required for these changes to become effective.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges.[7]

LCH SA believes that its clearing fee change proposal is consistent with the requirements of Section 17A of the Act[8] and the regulations thereunder applicable to it, and in particular provides for the equitable allocation of reasonable fees, dues, and other charges among clearing members and market participants by ensuring that clearing members and clients pay reasonable fees and dues for the services provided by LCH SA, within the meaning of Section 17A(b)(3)(D) of the Act.

As explained in our approved filing LCH SA–2021–002,[9] contrary to European government bonds, the new collateral scope is not eligible at the ECB to be used as collateral against cash in Euros, which in turn impacts how LCH SA monitors and manages its

[6] Self-Regulatory Organizations; LCH SA; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to LCH SA's Fee Grid for Non Cash Collateral, Exchange Act Release No. 34–87536 (Nov. 14, 2019); 84 FR 64125 (Nov. 20, 2019) (File No. SR–LCH SA–2019–010).

[7] 15 U.S.C. 78q–1(b)(3)(D).

[8] 15 U.S.C. 78q–1.

[9] Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to Eligible Collateral and Liquidity Risk Management, Exchange Act Release No. 34–93176 (Sept. 29, 2021); 86 FR 55061 (Oct. 5, 2021). File No. SR–LCH SA–2021–002.

liquidity resources. It therefore represents additional operational costs that are amongst other things captured in the pricing difference. That is why, the proposed fee change balances appropriately commercial conditions and the impacts on the liquidity of the CCP induced by additional non-euro denominated securities.

The fee charged to clients of LCH SA CDSClear service is unchanged compared to existing securities as LCH SA wanted to preserve consistency in the pricing for clients of LCH SA CDSClear service.

Additionally, today, CDSClear members and their clients mainly post cash collateral currently and LCH SA does not foresee that the proposed fee changes will alter current market practice amongst CDSClear's members and clients or will have any material impact on CDSClear's revenues. Indeed, the initiative is simply widening the list of eligible collateral as well as setting the associated fee for the new securities. It does not make any change to the fees charged on the existing list of eligible collateral and as such won't impact at all any of the current clearing members. Any clearing member wishing to deposit newly added securities as collateral for LCH SA will be able to do so knowing in advance the associated fee. Any clearing member not wishing to use the new range of eligible collateral for whatever reason will remain perfectly free to do so as well.

For all the reasons stated above, LCH SA believes that the proposed fee rates are reasonable and have been set up at an appropriate level given the costs, expenses and revenues generated to LCH SA in providing these expanded collateral management services.

B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[10]

LCH SA does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

LCH SA is offering the possibility for CDSClear members and clients to post a greater scope of instruments as eligible margin collateral. Additionally, the proposed fee change will apply equally to all CDSClear clearing members and is not expected to have any potential disparate outcomes on any of them. Finally, the fee rate changes will not adversely affect the ability of such members or other market participants generally to engage in cleared transactions or to access LCH SA's clearing services.

Further, as explained above, LCH SA believes that the fee rates have been set up at an appropriate level given the costs and expenses to LCH SA in offering the relevant clearing services.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)[11] of the Act and Rule 19b–4(f)(2)[12] thereunder because it establishes a fee or other charge imposed by LCH SA on its Clearing Members. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- 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–LCH SA–2021–003 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–LCH SA–2021–003. 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at *https://www.lch.com/resources/rulebooks/proposed-rule-changes.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–LCH SA–2021–003 and should be submitted on or before December 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–24528 Filed 11–9–21; 8:45 am]

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[10] 15 U.S.C. 78q–1(b)(3)(I).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93520; No. SR–NYSEArca–2021–94]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

November 4, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 1, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding incentives available to Market Makers. The Exchange proposes to implement the fee change effective November 1, 2021. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify certain incentives intended to encourage Market Maker posted volume.

Currently, the Fee Schedule provides a variety of incentives to encourage greater participation by Market Makers and Market Maker affiliates, including more favorable rates for higher volumes from posted interest (*e.g.,* the Market Maker Incentive For Non-Penny Interval Issues and the Market Maker Incentives for SPY). The Exchange also offers incentives that reward higher volume from posted interest in conjunction with activity in the NYSE Arca Equity Market (for purposes of this filing, activity in the NYSE Arca Equity Market is referred to as ''cross asset activity'').

The Exchange now proposes to modify the qualifying criteria for the Market Maker Penny and SPY Posting Credit Tiers [4] by (1) modifying the qualification basis for the additional $0.03 credit on Market Maker posted interest applicable to OTP Holders who qualify for either Super Tier (the ''Additional Credit''), and (2) eliminating one of the alternative qualifications for Super Tier II.

The Exchange proposes to implement the fee change on November 1, 2021.

Proposed Rule Change

The Exchange proposes to modify the qualifying criteria for the Additional Credit, which is currently applied to electronic executions of Market Maker posted interest in Penny Issues provided an OTP Holder or OTP Firm that qualifies for either Super Tier achieves (i) at least 0.18% of TCADV from Market Maker posted interest in all issues, and (ii) ETP Holder and Market Maker posted volume in Tape B Securities (''Tape B Adding ADV'') that is equal to at least 1.50% of US Tape B consolidated average daily volume (''CADV'') executed on the NYSE Arca Equity Market for the billing month.[5] The Exchange now proposes to modify the first qualification for the Additional Credit to require at least 0.55% of total combined IWM, QQQ, and SPY industry ADV from Market Maker posted interest in IWM, QQQ, and SPY.[6] The cross asset activity component to qualify for the Additional Credit will remain unchanged; OTP Holders will still be required to achieve ETP Holder and Market Maker posted volume in Tape B Adding ADV equal to at least 1.50% of US Tape B CADV for the billing month executed on NYSE Arca Equity Market to qualify for the Additional Credit. The Exchange believes that the proposed modification will encourage more Market Maker posted interest in certain very high volume products, in combination with cross asset activity.

The Exchange also proposes to eliminate one of the alternative qualifications for Super Tier II.[7] Currently, OTP Holders may achieve Super Tier II by meeting one of three alternative qualifications: (i) At least 0.10% of TCADV from Market Maker posted interest in all issues, plus ETP Holder and Market Maker posted volume in Tape B Adding ADV that is equal to at least 1.50% of US Tape B CADV for the billing month executed on NYSE Arca Equity Market; (ii) at least 0.10% of TCADV from Market Maker posted interest in all issues, plus at least 0.42% of executed ADV of Retail Orders of U.S. Equity Market Share posted and executed on the NYSE Arca Equity Market; or (iii) at least 1.60% of TCADV from Market Maker interest in all issues, with at least 0.90% of TCADV from Market Maker posted interest in all issues. The Exchange proposes to eliminate the second qualification described above, such that Market Makers that execute 10% of TCADV from Market Maker posted interest in all issues, plus at least 0.42% of executed ADV of Retail Orders of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity will no longer qualify for Super Tier II. Market Makers will still be able to earn the $0.42 credit available to OTP Holders that qualify for Super Tier II by meeting one of two alternative qualification levels. Although the Exchange proposes to eliminate one of the ways in which OTP Holders can qualify for the credit available in Super Tier II, the Exchange believes that the remaining alternative qualifying criteria are attainable and will continue to incentivize participation in greater volume from posted interest, as well as cross asset activity.

The Exchange cannot predict with certainty whether any OTP Holders would seek to qualify for the Additional Credit or to achieve Super Tier II, as modified, but believes that OTP Holders would continue to be encouraged to qualify for the advantages of the Additional Credit and Super Tier II. The Exchange believes the proposed modifications to the qualifying criteria for the Additional Credit and Super Tier II, which encourage increased posted interest from Market Makers in certain high-volume issues as well as cross market activity, would continue to incentivize OTP Holders to submit these types of orders to the Exchange, from all account types, which brings increased liquidity and order flow for the benefit of all market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

[4] *See* Fee Schedule, MARKET MAKER PENNY AND SPY POSTING CREDIT TIERS.

[5] This credit does not apply to executions of issues in an LMM's appointment, as Market Makers who are LMMs already receive an additional $0.04 credit on posted interest in Penny issues in their appointment.

[6] IWM is the iShares Russell 2000 ETF. QQQ is the Invesco QQQ Trust. SPY is the SPDR S&P 500 ETF Trust.

[7] OTP Holders that qualify for Super Tier II receive a $0.42 credit for executions in Penny Interval Program issues and SPY.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10]

There are currently 16 registered options exchanges competing for order flow. Based on publicly available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[11] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in September 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity & ETF options trades.[12]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

The Exchange believes that the proposed modifications to the qualifying criteria for the Additional Credit and Super Tier II are reasonably designed to incent OTP Holders to increase the number and variety of orders sent to the Exchange for execution. Specifically, to the extent that the proposed change attracts more Market Maker posted interest in certain high-volume issues and cross asset activity, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. Although the Exchange proposes to eliminate one of the alternative qualification bases for the credit available in Super Tier II, the Exchange believes that the remaining qualifying criteria will continue to incentivize participation in greater volume from posted interest, as well as cross asset activity.

Finally, to the extent the proposed change continues to attract greater volume and liquidity, the Exchange believes the proposed change would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors. The Exchange's fees are constrained by intermarket competition, as OTP Holders may direct their order flow to any of the 16 options exchanges, including those that also offer incentives based on Market Maker posted volume in IWM, QQQ, and SPY.[13] Thus, OTP Holders have a choice of where they direct their order flow, including their Market Maker posted interest and cross asset activity. The proposed rule change is designed to incent OTP Holders to direct liquidity to the Exchange, and in particular, Market Maker posted interest in highly liquid issues and cross asset activity, thereby promoting market depth, price discovery and improvement, and enhanced order execution opportunities for market participants.

At present, whether or when an OTP Holder qualifies for the various incentives set forth in the Market Maker Penny and SPY Posting Credit Tiers in a given month is dependent on market activity and an OTP Holder's mix of order flow. Thus, while the Exchange cannot predict with certainty whether any OTP Holders will seek to qualify for the Additional Credit or Super Tier II, as proposed, the Exchange believes that OTP Holders would continue to be encouraged to take advantage of the Additional Credit and Super Tier II $0.42 credit available to qualifying OTP Holders. The Exchange believes the proposed incentives, as modified, which apply to Market Maker posted interest in certain high volume issues and cross asset activity, would provide an incentive for OTP Holders to continue to submit these types of orders to the Exchange, which brings increased liquidity and order flow for the benefit of all market participants.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders can opt to seek to qualify for the incentives or not. Moreover, the proposal is designed to encourage OTP Holders to submit orders from all account types to the Exchange as a primary execution venue. In addition, while the Exchange proposes to modify the available qualification levels for Super Tier II, the Exchange believes that the remaining alternative qualifying criteria are attainable and will continue to incentivize participation in greater volume from posted interest, as well as cross asset activity. To the extent that the proposed change attracts more Market Maker posted interest to the Exchange, as well as increased cross asset activity, this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is Not Unfairly Discriminatory

The Exchange believes the proposed rule change is not unfairly discriminatory because the modified qualifying criteria for both the Additional Credit and the credit available to OTP Holders who achieve Super Tier II would apply and be available equally to all similarly-situated market participants on an equal and non-discriminatory basis.

[10] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[11] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[12] Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options was 10.9% for the month of September 2020 and 12.4% for the month of September 2021.

[13] *See* MIAX Pearl Options Exchange Fee Schedule, available at *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Pearl_Options_Fee_Schedule_100721.pdf* (offering tiered incentives based on Market Maker volume in IWM, QQQ, and SPY); Cboe BZX Options Fee Schedule, available at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/* (offering favorable credits as an alternative for Market Maker posting volume in IWM, QQQ, and SPY).

The proposal is based on the amount and type of business transacted on the Exchange, and OTP Holders are not obligated to try to achieve the qualifications for any of the tiers or execute either Market Maker posted interest or cross asset activity. Rather, the proposal is designed to continue to encourage OTP Holders to utilize the Exchange as a primary trading venue for Market Maker posted interest (if they have not done so previously) and to increase volume sent to the Exchange. To the extent that the proposed change attracts more Market Maker posted interest to the Exchange (particularly in certain high volume issues), this increased order flow would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [14]

Intramarket Competition. The proposed change is designed to attract additional order flow (particularly Market Maker posted interest in certain high volume issues) to the Exchange. The Exchange believes that the proposed modification to the qualifying criteria for the Additional Credit and the credit available to Super Tier II would continue to encourage market participants to direct their Market Maker posted interest volume to the Exchange, particularly in certain high volume issues, as well as encourage cross asset activity. Greater liquidity benefits all market participants on the Exchange, and increased Market Maker posted interest would increase opportunities for execution of other trading interest. The proposed modifications would apply and be available equally to all similarly-situated market participants that handle Market Maker posted interest and cross asset activity, and, accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in September 2021, the Exchange had less than 13% market share of executed volume of multiply-listed equity & ETF options trades.[16]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage OTP Holders to direct trading interest (particularly Market Maker posted interest and cross asset activity) to the Exchange, to provide liquidity and to attract order flow. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that also currently offer incentives based on Market Maker posted volume in IWM, QQQ, and SPY,[17] by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [18] of the Act and subparagraph (f)(2) of Rule 19b–4 [19] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[14] *See* Reg NMS Adopting Release, *supra* note 10, at 37499.

[15] *See supra* note 11.

[16] Based on OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in equity-based options was 10.9% for the month of September 2020 and 12.4% for the month of September 2021.

[17] *See supra* note 13.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(2).

[20] 15 U.S.C. 78s(b)(2)(B).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–94 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2021–94. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2021–94, and should be submitted on or before December 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–24527 Filed 11–9–21; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93524; File No. SR–MIAX–2021–54]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 4, 2021

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2021, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to make non-substantive, clarifying changes.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to make non-substantive, clarifying changes to Sections 3)b) and 5)d)ii) for the monthly Trading Permit fees for Market Makers [3] and the monthly MIAX Express Interface (''MEI'') [4] Port fees for Market Makers. The Exchange does not propose to amend the amount of Trading Permit fees or MEI Port fees in this filing. The Exchange also does not propose to amend the calculation methodology for Trading Permit fees or MEI Port fees in this filing.

Monthly Market Maker Trading Permit Fee Clarifying Changes

First, the Exchange proposes to amend Section 3)b) of the Fee Schedule to amend the text below the table for the monthly Trading Permit fees applicable to Market Makers. Specifically, the Exchange proposes to add the following two clarifying sentences to begin the explanatory paragraph following the table for the monthly Trading Permit fees applicable to Market Makers:

For the calculation of the monthly Market Maker Trading Permits, the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement. The amount of monthly Market Maker Trading Permit Fee will be based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, or upon the class volume percentages set forth in the above table.

The Exchange also proposes to remove the following sentence to the end of the explanatory paragraph, which is currently the first sentence of the explanatory paragraph below the table for the monthly Trading Permit fees applicable to Market Makers:

For the calculation of the monthly Market Maker Trading Permit Fees, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume percentage is based on the total national average daily volume in classes listed on MIAX in the prior calendar quarter.

In place of the deleted sentence described above, the Exchange proposes to insert the following two sentences, which will become sentences three and four of the revised explanatory paragraph:

The Exchange will assess MIAX Market Makers the monthly Market Maker Trading Permit Fee based on the greatest number of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Lead Market Makers,'' ''Primary Lead Market Makers,'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit simple an [sic] complex electronic quotes to MIAX. *See* MIAX Options Fee Schedule, 5) d) ii).

classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month. The class volume percentage is based on the total national average daily volume in classes listed on MIAX in the prior calendar quarter.

The Exchange notes that these two sentences are a combination of sentences already included in the explanatory paragraph. In connection with all of the changes described above, the Exchange proposes to delete the following sentence:

The Exchange will assess MIAX Market Makers the monthly Market Maker Trading Permit Fee based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement.

The Exchange notes that all of these changes, when taken together, do not alter the calculation methodology for how the Exchange currently calculates monthly Trading Permit fees for Market Makers. These changes are being made solely to clarify the explanatory paragraph below the table of fees for monthly Trading Permit fees for Market Makers. The Exchange believes that these revised sentences summarize that the monthly Market Maker Trading Permit fee rate is the lesser of the per class basis or the percentage of total national average daily volume measure and better clarifies how the MIAX Market Maker Trading Permit fee will continue to be calculated and applied each month. The Exchange does not propose to amend the amount or calculation of the monthly Trading Permit fee for Market Makers.

MEI Port Fee Clarifying Changes

Next, the Exchange proposes to amend Section 5)d)ii) of the Fee Schedule to make non-substantive, clarifying changes to the explanatory paragraph below the table of MEI Port fees applicable to Market Makers. The Exchange proposes to move the current first sentence of the explanatory paragraph below the table of MEI Port fees applicable to Market Makers in Section 5)d)ii) to now be the final sentence. In its place, the Exchange proposes to add the following sentence: ''The applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement.'' In connection with this change, the Exchange proposes to amend the sentence that will now follow the new first sentence of the explanatory paragraph. In particular, the Exchange proposes to move footnote 26 to the second sentence of the explanatory paragraph to contain the defined term in footnote 26 for ''MIAX Express Interface ('MEI')'' Port.[5] The final sentence of the explanatory paragraph will now read as follows: ''MIAX will assess monthly MEI Port Fees on Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class.''

Further, the Exchange proposes to amend the second sentence of the explanatory paragraph to remove the word ''and'' that connects the two clauses describing how the Exchange calculates the monthly MEI Port fee for Market Makers. In place of the word ''and,'' the Exchange proposes to clarify that the amount of the monthly MEI Port fee will be based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, or upon the class volume percentages set forth in the MEI Port fee table.

The Exchange further proposes to remove the fifth sentence of the explanatory paragraph below the table of MEI Port fees in Section 5)d)ii) and move it up in the paragraph, immediately following the second sentence. With this change, the third sentence of the explanatory paragraph will be as follows: ''The Exchange will assess MIAX Market Makers the monthly MEI Port Fee based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month.'' This phrase is currently contained in the fifth sentence of the explanatory paragraph and the Exchange now proposes to make the phrase its own sentence and move it earlier in the paragraph. The Exchange believes that these revised sentences summarize that the monthly MEI Port fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement and better clarifies how the monthly MEI Port fee for Market Makers will continue to be calculated and applied. The Exchange does not propose to amend the amount or calculation of the monthly MEI Port fee for Market Makers.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

The Exchange believes the proposed changes are consistent with Section 6(b)(4) of the Act in that they are reasonable, equitable, and not unfairly discriminatory because they are non-substantive, clarifying changes regarding the Exchange's monthly Trading Permit and MEI Port fees applicable to Market Makers and will reduce the risk of confusion to market participants. The proposed changes promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest by clarifying how the MIAX Market Maker Trading Permit fee and the MEI Port fee will be calculated and applied each month. The Exchange believes that these proposed changes will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed change will not impose any burden on intra-market competition as the proposed rule change will have no impact on competition as it is not designed to address any competitive issue but rather is designed to remedy minor non-substantive, clarifying issues and provide added clarity to the Fee Schedule. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

[5] *See* Fee Schedule, footnote 26.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[8] and Rule 19b–4(f)(2)[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2021–54 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–MIAX–2021–54. 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2021–54 and should be submitted on or before December 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–24530 Filed 11–9–21; 8:45 am]

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[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93527; File No. PCAOB–2021–01]

Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act

November 4, 2021.

I. Introduction

On September 23, 2021, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 107(b)[1] of the Sarbanes-Oxley Act of 2002 (as amended, the ''Sarbanes-Oxley Act'') and Section 19(b)[2] of the Securities Exchange Act of 1934 (the ''Exchange Act''), a proposal to adopt a new rule, PCAOB Rule 6100, *Board Determinations Under the Holding Foreign Companies Accountable Act* (the ''Proposed Rule'').[3] The Proposed Rule was published for comment in the **Federal Register** on September 28, 2021.[4] This order approves the Proposed Rule, which we find to be consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and necessary or appropriate in the public interest or for the protection of investors.

II. Description of the Proposed Rule

On September 22, 2021, the Board adopted the Proposed Rule,[5] which is intended to establish a framework for the Board's determinations under the Holding Foreign Companies Accountable Act (the ''HFCAA'') that the Board is unable to inspect or investigate completely registered public accounting firms located in a foreign jurisdiction because of a position taken by one or more authorities in that jurisdiction.

The Proposed Rule establishes:

- The manner of the Board's determinations;
- The factors the Board will evaluate and the documents and information the Board will consider when assessing whether a determination is warranted;
- The form, public availability, effective date, and duration of such determinations; and
- The process by which the Board will reaffirm, modify, or vacate any such determinations.

A. Applicability and Effective Date

The Proposed Rule will be effective promptly upon approval by the Commission.

III. Comment Letters

The comment period on the Proposed Rule ended on October 18, 2021, and we did not receive any comments on the Proposed Rule. The PCAOB received and considered public comments prior to adopting the Proposed Rule.

IV. Effect on Emerging Growth Companies

In the PCAOB Adopting Release, the Board concluded that Section 103(a)(3)(C) of the Sarbanes-Oxley Act does not apply to the Proposed Rule.[6] Section 103(a)(3)(C) of the Sarbanes-Oxley Act requires that any rules of the

[1] 15 U.S.C. 7217(b).

[2] 15 U.S.C. 78s(b).

[3] *See Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act,* PCAOB Release No. 2021–004 (Sept. 22, 2021) (''PCAOB Adopting Release''), available at *https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/rulemaking/docket048/2021-004-hfcaa-adopting-release.pdf?sfvrsn=f6dfb7f8_4.*

[4] *See Public Company Accounting Oversight Board; Notice of Filing of Proposed Rule on Board Determinations Under the Holding Foreign Companies Accountable Act,* Release No. 34–93112 (Sept. 23, 2021) [86 FR 53699 (Sept. 28, 2021)].

[5] *See supra* note 3.

[6] *See* PCAOB Adopting Release at footnote 112.

Board ''requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an emerging growth company [EGC].'' [7] The provisions of the Proposed Rule do not fall into these categories.

Section 103(a)(3)(C) further provides that ''[a]ny additional rules'' adopted by the PCAOB after April 5, 2012, do not apply to audits of EGCs ''unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.'' Since the Proposed Rule does not specify additional requirements for audits of EGCs, this provision does not apply to the Proposed Rule.

While we agree with the Board's conclusion that Section 103(a)(3)(C) of the Sarbanes-Oxley Act does not apply to the Proposed Rule, we nonetheless believe the Proposed Rule is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation. Specifically, by establishing a framework for the Board's determinations under the HFCAA and requiring firms to update their information promptly, all firms, including auditors of EGCs, and investors equally benefit from the transparency of the Board's determination set forth in the Proposed Rule.

V. Conclusion

The Commission has carefully reviewed and considered the Proposed Rule and the information submitted therewith by the PCAOB. In connection with the PCAOB's filing and the Commission's review,

A. The Commission finds that the Proposed Rule is consistent with the requirements of the Sarbanes-Oxley Act and the securities laws and is necessary or appropriate in the public interest or for the protection of investors; and

B. Separately, the Commission finds that Section 103(a)(3)(C) of the Sarbanes-Oxley Act does not apply to the Proposed Rule.

It is therefore ordered, pursuant to Section 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act, that the Proposed Rule (File No. PCAOB–2021–01) be and hereby is approved.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–24566 Filed 11–9–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93526; File No. SR–EMERALD–2021–36]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 4, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2021, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to make non-substantive, clarifying changes.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to make non-substantive, clarifying changes to Sections (3)(b) and (5)(d)(ii) for the monthly Trading Permit fees for Market Makers [3] and the monthly MIAX Emerald Express Interface (''MEI'') [4] Port fees for Market Makers. The Exchange does not propose to amend the amount of Trading Permit fees or MEI Port fees in this filing. The Exchange also does not propose to amend the calculation methodology for Trading Permit fees or MEI Port fees in this filing.

Monthly Market Maker Trading Permit Fee Clarifying Changes

First, the Exchange proposes to amend Section 3(b) of the Fee Schedule to amend the text below the table for the monthly Trading Permit fees applicable to Market Makers. Specifically, the Exchange proposes to add the following two clarifying sentences to begin the explanatory paragraph following the table for the monthly Trading Permit fees applicable to Market Makers:

For the calculation of the monthly Market Maker Trading Permits, the applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement. The amount of monthly Market Maker Trading Permit Fee will be based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, or upon the class volume percentages set forth in the above table.

The Exchange also proposes to remove the following sentence, which is currently the first sentence of the explanatory paragraph below the table for the monthly Trading Permit fees applicable to Market Makers:

For the calculation of the monthly Market Maker Trading Permit Fees, the number of classes is defined as the greatest number of classes the Market Maker was assigned to quote in on any given day within the calendar month and the class volume

[7] The term ''emerging growth company'' is defined in Section 3(a)(80) of the Exchange Act (15 U.S.C. 78c(a)(80)). *See also* Release No. 33–10332 *Inflation Adjustments and Other Technical Amendments Under Titles I and III of the JOBS Act* (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)].

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Lead Market Makers,'' ''Primary Lead Market Makers,'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] MIAX Emerald Express Interface (''MEI'') is a connection to the MIAX Emerald System that enables Market Makers to submit simple and complex electronic quotes to MIAX Emerald. *See* the Definitions Section of the Fee Schedule.

percentage is based on the total national average daily volume in classes listed on MIAX Emerald in the prior calendar quarter.

In place of the deleted sentence described above, the Exchange proposes to insert the following two sentences, which will become sentences three and four of the revised explanatory paragraph:

The Exchange will assess MIAX Emerald Market Makers the monthly Market Maker Trading Permit Fee based on the greatest number of classes listed on MIAX Emerald that the MIAX Emerald Market Maker was assigned to quote in on any given day within a calendar month. The class volume percentage is based on the total national average daily volume in classes listed on MIAX Emerald in the prior calendar quarter.

The Exchange notes that these two sentences are a combination of sentences already included in the explanatory paragraph. In connection with all of the changes described above, the Exchange proposes to delete the following sentence:

The Exchange will assess MIAX Emerald Market Makers the monthly Market Maker Trading Permit Fee based on the greatest number of classes listed on MIAX Emerald that the MIAX Emerald Market Maker was assigned to quote in on any given day within a calendar month and the applicable fee rate that is the lesser of either the per class basis or percentage of total national average daily volume measurement.

The Exchange notes that all of these changes, when taken together, do not alter the calculation methodology for how the Exchange currently calculates monthly Trading Permit fees for Market Makers. These changes are being made solely to clarify the explanatory paragraph below the table of fees for monthly Trading Permit fees for Market Makers. The Exchange believes that these revised sentences summarize that the monthly Market Maker Trading Permit fee rate is the lesser of the per class basis or the percentage of total national average daily volume measure and better clarifies how the MIAX Market Maker Trading Permit fee will continue to be calculated and applied each month. The Exchange does not propose to amend the amount or calculation of the monthly Trading Permit fee for Market Makers.

MEI Port Fee Clarifying Changes

Next, the Exchange proposes to amend Section 5(d)(ii) of the Fee Schedule to make non-substantive, clarifying changes to the explanatory paragraph below the table of MEI Port fees applicable to Market Makers. The Exchange proposes to move the current first sentence of the explanatory paragraph below the table of MEI Port fees applicable to Market Makers in Section 5(d)(ii) to now be the final sentence. In its place, the Exchange proposes to add the following sentence: ''The applicable fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement.'' In connection with this change, the Exchange proposes to amend the sentence that will now follow the new first sentence of the explanatory paragraph. In particular, the Exchange proposes to add ''MIAX Emerald Express Interface'' to the second sentence of the explanatory paragraph to contain the full term, ''MIAX Express Interface ('MEI')'' Port. The final sentence of the explanatory paragraph will now read as follows: ''MIAX Emerald will assess monthly MEI Port Fees on Market Makers in each month the Member has been credentialed to use the MEI Port in the production environment and has been assigned to quote in at least one class.''

Further, following the above changes, the Exchange proposes to amend the second sentence of the explanatory paragraph to remove the word ''and'' that connects the two clauses describing how the Exchange calculates the monthly MEI Port fee for Market Makers. In place of the word ''and,'' the Exchange proposes to clarify that the amount of the monthly MEI Port fee will be based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, or upon the class volume percentages set forth in the MEI Port fee table.

The Exchange further proposes to remove the fifth sentence of the explanatory paragraph below the table of MEI Port fees in Section 5(d)(ii) and move it up in the paragraph, immediately following the second sentence. With this change, the third sentence of the explanatory paragraph will be as follows: ''The Exchange will assess MIAX Emerald Market Makers the monthly MEI Port Fee based on the greatest number of classes listed on MIAX Emerald that the MIAX Emerald Market Maker was assigned to quote in on any given day within a calendar month.'' This phrase is currently contained in the fifth sentence of the explanatory paragraph and the Exchange now proposes to make the phrase its own sentence and move it earlier in the paragraph. The Exchange believes that these revised sentences summarize that the monthly MEI Port fee rate is the lesser of either the per class basis or percentage of total national average daily volume measurement and better clarifies how the monthly MEI Port fee for Market Makers will continue to be calculated and applied. The Exchange does not propose to amend the amount or calculation of the monthly MEI Port fee for Market Makers.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

The Exchange believes the proposed changes are consistent with Section 6(b)(4) of the Act in that they are reasonable, equitable, and not unfairly discriminatory because they are non-substantive, clarifying changes regarding the Exchange's monthly Trading Permit and MEI Port fees applicable to Market Makers and will reduce the risk of confusion to market participants. The proposed changes promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest by clarifying how the MIAX Emerald Market Maker Trading Permit fee and the MEI Port fee will be calculated and applied each month. The Exchange believes that these proposed changes will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and that it is in the public interest for the Fee Schedule to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes the proposed change will not impose any burden on

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

intra-market competition as the proposed rule change will have no impact on competition as it is not designed to address any competitive issue but rather is designed to remedy minor non-substantive, clarifying issues and provide added clarity to the Fee Schedule. In addition, the Exchange does not believe the proposal will impose any burden on inter-market competition as the proposal does not address any competitive issues and is intended to protect investors by providing further transparency regarding the Exchange's Fee Schedule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2021–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2021–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2021–36 and should be submitted on or before December 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

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BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93525; File No. SR–CBOE–2021–029]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, To Increase Position Limits for Options on Two Exchange-Traded Funds

November 4, 2021.

I. Introduction

On April 21, 2021, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Interpretation and Policy .07 of Exchange Rule 8.30, Position Limits, to increase the position limits for options on the following exchange-traded funds (''ETFs'') and exchange-traded note: SPDR Gold Shares (''GLD''), iShares iBoxx $ Investment Grade Corporate Bond ETF (''LQD''), iShares Silver Trust (''SLV''), iPath S&P 500 VIX Short-Term Futures ETN (''VXX''), ProShares Ultra VIX Short-Term Futures ETF (''UVXY''), and VanEck Vectors Gold Miners ETF (''GDX'').[3] The proposed rule change was published for comment in the **Federal Register** on May 10, 2021.[4] On June 17, 2021, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[6] On July 27, 2021, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As noted below, the Exchange subsequently amended its proposal to remove the proposed increases in position limits for options on GLD, SLV, VXX, and UVXY. *See infra* notes 10–11. As a result, the proposal as amended, and this order, address only proposed position limit increases for options on LQD and GDX.

[4] *See* Securities Exchange Act Release No. 91767 (May 4, 2021), 86 FR 25026. To date, the Commission has received no comments on the proposed rule change.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 92204, 86 FR 33395 (June 24, 2021). The Commission designated August 8, 2021, as the date by which the Commission was required to approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

filed.[7] On August 5, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[8] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[9] On October 8, 2021, the Exchange submitted Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.[10] On October 25, 2021, the Exchange submitted Amendment No. 3 to the proposed rule change.[11] The Commission is publishing this notice to solicit comment on Amendment Nos. 2 and 3, and is approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment Nos. 1, 2, and 3

Currently, position limits for options on ETFs traded on the Exchange, such as those subject to this proposal, as amended, are determined pursuant to Exchange Rule 8.30, and generally vary according to the number of outstanding shares and past six-month trading volume of the underlying security. Options on the securities with the largest numbers of outstanding shares and trading volume have a standard option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.[12] In addition, Interpretation and Policy .07 of Exchange Rule 8.30 currently sets forth separate position limits for options on certain ETFs that range from 300,000 to 3.6 million contracts.

Options on LQD and GDX are currently subject to the standard position limit of 250,000 contracts as set forth in Exchange Rule 8.30.[13] The purpose of the proposed rule change, as modified, is to amend Interpretation and Policy .07 to Exchange Rule 8.30 to increase the position limits for options on LQD and GDX from 250,000 contracts to 500,000 contracts.[14] The Exchange believes that the proposed position limit increases will lead to a more liquid and competitive market environment for these options that will benefit customers interested in trading these products.[15] To support the proposed position limit increases, the Exchange has provided statistics regarding: The liquidity of LQD and GDX, as well as the value of these ETFs, their components, and the relevant marketplace; the share volume for LQD and GDX and contract volume for the options on these ETFs; and the trading characteristics of products that the Exchange believes are economically equivalent to LQD and GDX and options thereon.

Specifically, in support of its proposal to increase the position limit for options on GDX from 250,000 contracts to 500,000 contracts, the Exchange, among other things, compares the trading characteristics of GDX to those of the iShares MSCI Brazil Capped ETF (''EWZ''), the iShares 20+ Year Treasury Bond Fund ETF (''TLT''), the iShares MSCI Japan ETF (''EWJ''), and the iShares iBoxx High Yield Corporate Bond Fund (''HYG''), options on all of which currently have a position limit of 500,000 contracts.[16] The Exchange states that the average daily trading volume (''ADV'') in calendar year 2020 for GDX was 39.4 million shares compared to 29.2 million shares for EWZ, 11.5 million shares for TLT, 8.2 million shares for EWJ, and 30.5 million shares for HYG; [17] the total shares outstanding as of April 5, 2021 for GDX was 419.8 million compared to 173.8 million for EWZ, 103.7 million for TLT, 185.3 million for EWJ, and 254.5 million for HYG; [18] and the fund market cap as of January 14, 2021 for GDX was $16,170.5 million compared to $6,506.8 million for EWZ, $17,121.3 million for TLT, $13,860.7 million for EWJ, and $24,067.5 million for HYG.[19] The Exchange also states that many of the Brazil-based gold mining constituents included in GDX are also included in EWZ, and that the Exchange has not identified any issues with the continued listing and trading of EWZ options or any adverse market impact on EWZ in connection with the current 500,000 position limit in place for EWZ options.[20] Further, the Exchange states that the components of the NYSE Arca Gold Miners Index—the price and yield performance of which GDX seeks to replicate as closely as possible—can be used to create GDX, and currently must each have a market capitalization greater than $750 million, an ADV of at least 50,000 shares, and an average daily value traded of at least $1 million in order to be eligible for inclusion in the index.[21]

In support of its proposal to increase the position limit for options on LQD from 250,000 contracts to 500,000 contracts, the Exchange, among other things, compares the trading characteristics of LQD to those of EWZ, TLT, and EWJ, options on all of which currently have a position limit of 500,000 contracts.[22] The Exchange provides data demonstrating that the ADV in calendar year 2020 for LQD was 14.1 million shares compared to 29.2 million shares for EWZ, 11.5 million shares for TLT, and 8.2 million shares for EWJ; [23] the total shares outstanding as of April 5, 2021 for LQD was 308.1 million compared to 173.8 million for EWZ, 103.7 million for TLT, and 185.3 million for EWJ; [24] and the fund market cap as of January 14, 2021 for LQD was $54,113.7 million compared to $6,506.8 million for EWZ, $17,121.3 million for TLT, and $13,860.7 million for EWJ.[25] The Exchange also states that LQD tracks the performance of the Markit iBoxx USD Liquid Investment Grade Index, which is an index designed as a subset of the broader U.S. dollar-denominated corporate bond market and can be used in creating a basket of securities that equates to LQD, and which is comprised of over 8,000 bonds for which the outstanding face value of

[7] In Amendment No. 1, the Exchange: (1) Reduced the proposed position limit for GLD options from 1,000,000 contracts to 500,000 contracts; and (2) provided additional justification and analysis in support of the proposal. The full text of Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2021-029/srcboe2021029-9094584-246812.pdf.*

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 92581, 86 FR 44118 (August 11, 2021).

[10] In Amendment No. 2, the Exchange: (1) Revised its proposal to eliminate its originally proposed increases to position limits for options on VXX and UVXY; (2) provided additional justification and analysis in support of its proposed increases to position limits for options on GLD and SLV; and (3) made technical, corrective, and clarifying changes. The full text of Amendment No. 2 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2021-029/srcboe2021029-9332427-260236.pdf.*

[11] In Amendment No. 3, the Exchange revised its proposal to eliminate the proposed increases to position limits for options on GLD and SLV, and stated that it intends separately to propose to increase the position limits for these options. The full text of Amendment No. 3 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2021-029/srcboe2021029-9352219-261347.pdf.*

[12] *See* Interpretation and Policy .02(e) to Exchange Rule 8.30.

[13] *See* Amendment No. 2, *supra* note 10, at 6; *see also id.* at 18–20, for descriptions provided by the Exchange regarding the composition, design, and investment objectives of LQD and GDX.

[14] Pursuant to Exchange Rule 8.42, Interpretation and Policy .02, the text of which is not being amended by this proposal, the exercise limits for LQD and GDX options would be similarly increased as a result of this proposal.

[15] *See* Amendment No. 2, *supra* note 10, at 22.

[16] *See id.* at 9, 20. *See also* Exchange Rule 8.30, Interpretation and Policy .07.

[17] *See* Amendment No. 2, *supra* note 10, at 20.

[18] *See id.* at 9.

[19] *See id.* at 9, 20.

[20] *See id.* at 20.

[21] *See id.* at 20–21.

[22] *See id.* at 9, 18–19. *See also* Exchange Rule 8.30, Interpretation and Policy .07.

[23] *See* Amendment No. 2, *supra* note 10, at 18.

[24] *See id.* at 9.

[25] *See id.* at 9, 19.

each must be greater than or equal to $2 billion.[26]

The Exchange states that the current position limits for options on LQD and GDX may have impeded the ability of market makers to make markets on the Exchange.[27] According to the Exchange, the proposal is designed to encourage liquidity providers to provide additional liquidity to the Exchange and other market participants to shift liquidity from over-the-counter markets onto the Exchange, which, it believes, would enhance the process of price discovery conducted on the Exchange through increased order flow.[28] The proposal also would benefit market participants, the Exchange maintains, by providing them with the ability to more effectively execute their trading and hedging activities.[29]

With regard to the concerns that position limits generally are meant to address, the Exchange represents that the structure of LQD and GDX, the considerable market capitalization of these ETFs and their underlying component securities, and the liquidity of the markets for options on these ETFs and the underlying component securities mitigate concerns regarding potential manipulation of the products and disruption of the underlying markets due to the increased position limits.[30] The Exchange also states that the creation and redemption process for an ETF creates a direct link to the underlying components of the ETF and serves to mitigate the potential price impact of the ETF shares that might otherwise result from increased position limits, and that arbitrage activity helps to keep an ETF's price in line with the value of its underlying portfolio.[31]

In addition, the Exchange states that the options reporting requirements of Exchange Rule 8.43 would continue to be applicable to the options subject to this proposal.[32] As set forth in Exchange Rule 8.43(a), each Trading Permit Holder (''TPH'') must report to the Exchange certain information in relation to any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts in any single class of option contracts dealt in on the Exchange.[33] Further, Exchange Rule 8.43(b) requires each TPH (other than an Exchange market-maker or designated primary market-maker) [34] that maintains a position in excess of 10,000 non-FLEX equity option contracts on the same side of the market, on behalf of its own account or for the account of a customer, to report to the Exchange information as to whether such positions are hedged, and provide documentation as to how such contracts are hedged.[35]

The Exchange also represents that the existing surveillance procedures and reporting requirements at the Exchange and other self-regulatory organizations are capable of properly identifying disruptive and/or manipulative trading activity.[36] According to the Exchange, its surveillance procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlying products.[37] In addition, the Exchange states that its surveillance procedures have been effective for the surveillance of trading in the options subject to this proposal, and will continue to be employed.[38]

The Exchange further states that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a TPH or its customer may try to maintain an inordinately large unhedged position in the options subject to this proposal.[39] Current margin and risk-based haircut methodologies, the Exchange states, serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a TPH must maintain for a large position held by itself or by its customer.[40] In addition, the Exchange notes that the Commission's net capital rule, Rule 15c3–1 under the Act,[41] imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.[42]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[43] In particular, the Commission finds that the proposed rule change, as modified, is consistent with Section 6(b)(5) of the Act,[44] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Position and exercise limits serve as a regulatory tool designed to deter manipulative schemes and adverse market impact surrounding the use of options. Since the inception of standardized options trading, the options exchanges have had rules limiting the aggregate number of options contracts that a member or customer may hold or exercise.[45] These position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate the underlying market so as to benefit the options positions, or that might contribute to disruptions in the underlying market.[46] In addition, such limits serve to reduce the possibility of disruption in the options market itself, especially in illiquid classes.[47]

Over the years, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits for option products overlying certain ETFs where there is considerable liquidity in both the underlying securities markets and the options markets.[48] The Commission has

[26] *See id.* at 18–19.

[27] *See id.* at 5.

[28] *See id.* at 5, 25–26.

[29] *See id.* at 5, 25.

[30] *See id.* at 5–6, 26.

[31] *See id.* at 21–22.

[32] *See id.* at 22–23.

[33] The report must include, for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered. *See* Exchange Rule 8.43(a).

[34] According to the Exchange, market-makers (including designated primary market-makers) are exempt from the referenced reporting requirement because market-maker information can be accessed through the Exchange's market surveillance systems. *See* Amendment No. 2, *supra* note 10, at 23.

[35] *See id.* at 22–23.

[36] *See id.* at 23.

[37] *See id.* at 23–24.

[38] *See id.* at 24 n.39. The Exchange represents that non-U.S. component securities that are not subject to a comprehensive surveillance agreement do not, in the aggregate, represent more than 50% of the weight of LQD or GDX. *See id.* at 7–8.

[39] *See id.* at 24.

[40] *See id.*

[41] 17 CFR 240.15c3–1.

[42] *See* Amendment No. 2, *supra* note 10, at 24.

[43] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78f(b)(5).

[45] *See, e.g.,* Securities Exchange Act Release No. 45236 (January 4, 2002), 67 FR 1378 (January 10, 2002) (SR–Amex–2001–42).

[46] *See, e.g.,* Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (SR–CBOE–2002–26).

[47] *See id.*

[48] The Commission's incremental approach to approving changes in position and exercise limits for option products overlying certain ETFs is well-established. *See, e.g.,* Securities Exchange Act Release Nos. 88768 (April 29, 2020), 85 FR 26736 (May 5, 2020) (SR–CBOE–2020–015) (approving increase of position limits for options on certain

been careful to balance two competing concerns when considering proposals by self-regulatory organizations to change position and exercise limits. The Commission has recognized that the limits can be useful to prevent investors from disrupting the market in securities underlying the options.[49] At the same time, the Commission has determined that limits should not be established in a manner that will unnecessarily discourage participation in the options market by institutions and other investors with substantial hedging needs or prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.[50]

After careful consideration of the proposal, as modified by Amendment Nos. 1, 2, and 3, the Commission believes that it is reasonable for the Exchange to increase the position and exercise limits for options on LQD and GDX to 500,000 contracts. As noted above, the markets for standardized options on these securities and for the underlying securities have substantial trading volume and liquidity. The Commission believes that this liquidity should reduce the possibility of manipulation and underlying market disruption.

The Commission also has considered the creation and redemption processes for the ETFs subject to the proposal; the existence of an issuer arbitrage mechanism that helps keep each ETF's price in line with the value of its underlying portfolio when overpriced or trading at a discount to the securities on which it is based; and how these processes can serve to mitigate the potential price impact that might otherwise result from increased position limits.[51]

In addition, as discussed above, the Exchange believes that current margin and net capital requirements serve to limit the size of positions maintained by any one account.[52] The Commission agrees that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in the options subject to this proposal and will help to reduce risks if such a position is established.

The Commission also believes that the reporting requirements imposed by Exchange Rule 8.43,[53] as well as the Exchange's surveillance procedures, together with those of other self-regulatory organizations,[54] should help protect against potential manipulation. The Commission expects that the Exchange will continue to monitor trading in the options subject to this proposal for the purpose of discovering and sanctioning manipulative acts and practices, and will reassess the position and exercise limits, if and when appropriate, in light of its findings.

In sum, given the measures of liquidity for the options subject to this proposal and the underlying securities, the creation and redemption processes and issuer arbitrage mechanisms that exist relating to the underlying instruments, the margin and capital requirements cited above, the Exchange's options reporting requirements, and the Exchange's surveillance procedures and agreements with other markets, the Commission believes that it is consistent with the Act to increase the position and exercise limits to 500,000 contracts for options on LQD and GDX.

IV. Solicitation of Comments on Amendment Nos. 2 and 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 2 and 3 are 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–2021–029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2021–029. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2021–029, and should be submitted on or before [insert date 21 days from publication in the **Federal Register**].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment Nos. 2 and 3 in the **Federal Register**. The sum effect of these amendments was to eliminate the proposed increases to position limits for options on VXX, UVXY, GLD, and SLV from the proposal, and to make technical, corrective, and clarifying changes. As a result, Amendment Nos. 2 and 3 narrow the scope of the proposal such that it would increase the position limits to 500,000 contracts only for LQD and GDX options—which increases have been subject to a full notice-and-comment period since publication of the original notice—and leave in place the current position limits of 250,000 contracts for options on VXX, UVXY, GLD, and SLV. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[55] to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

ETFs and indices); and 82770 (February 23, 2018), 83 FR 8907 (March 1, 2018) (SR–CBOE–2017–057) (approving increase of position limits for options on certain ETFs).

[49] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11).

[50] *See id.*

[51] *See supra* notes 30–31 and accompanying text.

[52] *See supra* notes 39–42 and accompanying text.

[53] *See supra* notes 32–35 and accompanying text.

[54] *See supra* notes 36–38 and accompanying text.

[55] 15 U.S.C. 78s(b)(2).

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[56] that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 (SR–CBOE–2021–029), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–24531 Filed 11–9–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93523; File No. SR–ICEEU–2021–020]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Liquidity Management Procedures and Investment Management Procedures

November 4, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2021, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to amend its Liquidity Management Procedures and Investment Management Procedures to make certain clarifications and updates.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe is proposing to amend its Liquidity Management Procedures to (i) reflect that cash substitution requests may be as a source of payment obligations relevant to liquidity management, (ii) include certain additional procedures and requirements for the Clearing House with respect to adding new accounts or amending existing accounts with counterparties and (iii) clarify how intraday collateral is being monitored. ICE Clear Europe also proposes to amend its Investment Management Procedures to (i) add additional detail with respect to Maximum Issuer/Counterparty Concentration Limits in respect of reverse repurchase agreements and (ii) add additional concentration limits for investment of customer funds of FCM/BD Clearing Members.

I. Liquidity Management Procedures

The list of payment obligations relating to liquidity management would be revised to reflect explicitly that any cash substitution requests by Clearing Members would be a source of payment obligations. The amendment does not reflect a change in any Clearing House practice or source of obligations but is intended to make the list more comprehensive.

A new section relating to special considerations for account opening would be added. The amendments would provide that when the Clearing House is adding new accounts or amending existing accounts with counterparties, the Treasury Department would advise the Legal and Compliance Departments in accordance with relevant departmental procedures to ensure that relevant banking agreements are modified, any side or acknowledge letters are obtained and any required regulatory submissions are timely made, as appropriate. Such scenarios would include the opening of new accounts for futures customer funds in accordance with CFTC § 1.20(g).

Provisions relating to haircutting of non-cash collateral and cash collateral in currencies other than the required currency would be amended to correct the reference to the Credit Risk team (not the Clearing Risk team) that monitors the price of such assets. The amendments would also state that the price of such assets would be monitored during the day against the applied haircuts, as a clarification that reflects current practice. The statement that the Credit Risk team would call for additional IM in the event of a shortfall in the value of the collateral held would be removed as unnecessary to be in the Liquidity Management Procedures as that is addressed in other existing Clearing House policies.

Other technical, typographical and formatting edits would be made.

II. Investment Management Procedures

In the Table of Authorised Investments and Concentration Limits for Cash from CMs and from Skin In The Game (the ''Table''), the Maximum Issuer/Counterparty Concentration Limits applicable to reverse repurchase agreements would be revised to clarify that the numerical concentration limits are based on total cash balance per counterparty group, consistent with existing practice. Additionally, a footnote would be added to such section to provide that breaches of those issuer limits for reverse repurchase agreements solely due to valuation differences or operational failure/error will not be considered as a breach of policy. Such updates are to provide additional detail about existing practices in order to provide clarification and are not intended to reflect any change such practices.

The Table would also be updated to add an additional concentration limits for FCM customer funds. Specifically, with respect to reverse repurchase agreements, the Maximum Issuer/Counterparty Concentration Limits would be 25% of total FCM customer cash balance per counterparty group. The amendment is intended to document an existing limitation based on CFTC Rule 1.25.

(b) Statutory Basis

ICE Clear Europe believes that the amendments to the Liquidity Management Procedures and the Investment Management Procedures are consistent with the requirements of Section 17A of the Act [3] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act [4] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent

[56] *Id.*

[57] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–1(b)(3)(F).

applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed amendments to the Liquidity Management Procedures and the Investment Management Procedures are designed to update certain of the Clearing House's practices with respect to the management of liquidity and investments, respectively. The proposed updates to the Liquidity Management Procedures would more clearly certain practices relating to monitoring of collateral prices and enhance certain account opening procedures. The proposed updates to the Investment Management Procedures would clarify certain concentration limits relating to investments of assets provided by Clearing Members. The proposed amendments thus enhance the overall risk management of the Clearing House and promote the accuracy and stability of the Clearing House's policies and procedures and the prompt and accurate clearance and settlement of cleared contracts. The proposed amendments to the Liquidity Management Procedures and the Investment Management Procedures are thus also generally consistent with the protection of investors and the public interest in the safe operation of the Clearing House. The updates to each of the Liquidity Management Procedures and the Investment Management Procedures will also facilitate safe management of the cash held by the Clearing House from Clearing Member's and their customers, and thus enhance the safeguarding of securities and funds in ICE Clear Europe's custody or control or for which it is responsible. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).[5]

The proposed revisions to the Liquidity Management Procedures and the Investment Management Procedures are also consistent with relevant provisions of Rule 17Ad–22. Rule 17Ad–22(e)(3)(i)[6] requires clearing agencies to maintain a sound risk management framework that identifies, measures, monitors and manages the range of risks that it faces. As described above, the proposed updates to the Liquidity Management Procedures are intended to more clearly document and enhance certain policies, practices and considerations for monitoring and reviewing liquidity risks. The proposed updates to the Investment Management Procedures would provide further description with respect to the Clearing House's investments, as described above, particularly with respect to concentration limits applicable to reverse repurchase agreements. The proposed amendments would thus strengthen the management of potential counterparty investment risks, and risk management more generally. In ICE Clear Europe's view, the amendments are therefore consistent with the requirements of Rule 17Ad–22(e)(3)(i).[7]

Rule 17A–22(e)(16) requires clearing agencies to safeguard their own and their ''participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks.'' [8] As discussed above, the amendments to the Liquidity Management Procedures are intended to enhance account opening procedures, which will facilitate protection of assets of Clearing Members and their customers provided to the Clearing House. The proposed updates to the Investment Management Procedures would clarify Maximum Issuer/Counterparty Concentration Limits applied in connection with the investment of assets of Clearing Members and their customers. As such, the revised Liquidity Management Procedures and Investment Management Procedures will help enable the Clearing House to safeguard such assets and minimize the risk of loss from liquidity and investment risks, consistent with the requirements of Rule 17Ad–22(e)(16).[9]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed documents would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed in order to update the Liquidity Management Procedures and the Investment Management Procedures to provide clarifications and additional details where necessary in order to reflect existing practices and are not intended to impose new requirements on Clearing Members. The terms of clearing are not otherwise changing. ICE Clear Europe does not believe that proposed amendments would adversely affect competition among Clearing Members or other market participants or affect the ability of market participants to access clearing generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change and adoption.

III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission and Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–ICEEU–2021–020 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–ICEEU–2021–020. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 240.17 Ad–22(e)(3)(i).

[7] 17 CFR 240.17 Ad–22(e)(3)(i).

[8] 17 CFR 240.17Ad–22(e)(16).

[9] 17 CFR 240.17Ad–22(e)(16).

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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2021–020 and should be submitted on or before December 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021–24529 Filed 11–9–21; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17260 and #17261; Kentucky Disaster Number KY–00086]

Administrative Declaration of a Disaster for the Commonwealth of Kentucky

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Kentucky dated 11/03/2021.

Incident: Severe Flash Flooding.

Incident Period: 07/29/2021 through 07/30/2021.

DATES: Issued on 11/03/2021.

Physical Loan Application Deadline Date: 01/03/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 08/03/2022.

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, (202) 205–6734.

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: Nicholas

Contiguous Counties:

Kentucky: Bath, Bourbon, Fleming, Harrison, Montgomery, Robertson

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.125
Homeowners without Credit Available Elsewhere	1.563
Businesses with Credit Available Elsewhere	5.710
Businesses without Credit Available Elsewhere	2.855
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.855
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 17260 6 and for economic injury is 17261 0.

The State which received an EIDL Declaration # is Kentucky.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2021–24560 Filed 11–9–21; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11575]

Department of State Performance Review Board Members

In accordance with section 4314(c)(4) of 5 United States Code, the Department of State has appointed the following individuals to the Performance Review Board for Career and Non-Career Senior Executive Service members:

Erin M. Barclay, Coordinator for Democratic Renewal, Office of the Undersecretary for Civilian Security, Democracy and Human Rights, Department of State;

Hilary Batjer Johnson, Deputy Coordinator, Bureau of Counterterrorism, Department of State;

Jane Rhee, Deputy Assistant Secretary, International Organization Affairs, Department of State;

Keith A. Jones, Chief Information Officer, Information Resource Management; Department of State

Kerry Neal, Managing Director, Comptroller and Global Financial Services, Department of State;

Roger Carstens, Special Envoy, Office of the Special Presidential Envoy for Hostage Affairs, Department of State;

Shawn M. Pompian, Assistant Legal Adviser, Office of the Legal Adviser, Department of State.

and,

Sherry Hannah, Deputy Director, Bureau of Budget & Planning, Department of State.

Erica Spriggs,

Division Director, Executive Services and Performance Management, Department of State.

[FR Doc. 2021–24552 Filed 11–9–21; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice: 11578]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Fashioning an Empire: Safavid Textiles From the Museum of Islamic Art, Doha'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Fashioning an Empire: Safavid Textiles from the Museum of Islamic Art, Doha'' at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, District of Columbia, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

[10] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 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.

Matthew R. Lussenhop,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2021–24536 Filed 11–9–21; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 979 (Sub-No. 3X)]

Connecticut Southern Railroad, Inc.—Abandonment Exemption—in Hartford County, Conn.

Connecticut Southern Railroad, Inc. (CSO), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exemption Abandonments* to abandon a rail line between approximately milepost 8.33 (Station 5730+04) and milepost 9.40 (Station 5673+42) in Hartford County, Conn. (the Line). There are no stations on the Line. The Line traverses U.S. Postal Service Zip Code 06042.

CSO has certified that: (1) No local traffic has moved over the Line since approximately July 2016; (2) because the Line is not a ''through line,'' there is no overhead traffic that would need to be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by state or local government on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publications), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] this exemption will be effective on December 10, 2021, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/rail banking request under 49 CFR 1152.29 must be filed by November 22, 2021.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 30, 2021.

All pleadings, referring to Docket No. AB 979 (Sub-No. 3X), should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on CSO's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market Street, Suite 2620, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CSO has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by November 15, 2021. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSO shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by CSO's filing of a notice of consummation by November 10, 2022, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: November 5, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2021–24568 Filed 11–9–21; 8:45 am]

BILLING CODE 4915–01–P

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36550]

Missouri Eastern Railroad, LLC—Acquisition and Change of Operator Exemption—V and S Railway, LLC, and Central Midland Railway Company

Missouri Eastern Railroad, LLC (MER), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire: (1) From V and S Railway, LLC (V&S), an approximately 42.89-mile rail line between milepost 19.0 near Vigus, Mo., and milepost 61.89 near Union, Mo., (the Line); and (2) incidental overhead trackage rights over a rail line owned by Union Pacific Railroad Company between milepost 19.0 near Vigus and milepost 10.3 at Rock Island Junction, Mo. (the TR Segment).

According to the verified notice, MER and V&S are in the process of finalizing the terms of an asset purchase agreement (the Agreement), pursuant to which MER will assume ownership of the Line. The verified notice indicates that Central Midland Railway Company (Central Midland) currently operates the Line (and also leases the TR Segment), and that, in light of MER's purchase of the Line, Central Midland has agreed that MER will replace it as the common carrier operator on the Line, thus effectuating a change of operator. MER states that it plans to replace Central Midland as the common carrier operator on the Line on or after January 1, 2022,

and would commence operations on the TR Segment at that same time.

MER certifies that the transaction does not involve any provision, restriction, or agreement that would limit future interchange with a third-party connecting carrier. MER further certifies that its projected annual revenues resulting from the transaction will not exceed $5 million and will not result in MER's becoming a Class I or Class II rail carrier. Under 49 CFR 1150.32(b), a change in operator requires that notice be given to shippers. MER has certified that notice of the proposed transaction has been provided to shippers on the Line.

The earliest this transaction may be consummated is November 24, 2021. MER states that it expects to acquire the Line on or after that date and to commence operations over the Line and its incidental trackage rights over the TR Segment on or after January 1, 2022.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 17, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36550, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on MER's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to MER, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 5, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2021–24598 Filed 11–9–21; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36551]

OPSEU Pension Plan Trust Fund, Jaguar Transport Holdings, LLC, and Jaguar Rail Holdings, LLC—Continuance in Control Exemption—Missouri Eastern Railroad, LLC

OPSEU Pension Plan Trust Fund (OPTrust), Jaguar Transport Holdings, LLC (JTH), and Jaguar Rail Holdings, LLC (JRH, and collectively with OPTrust and JTH, Jaguar), all noncarriers, have filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Missouri Eastern Railroad, LLC (MER), a noncarrier established by Jaguar to acquire a railroad line (and related, incidental overhead trackage rights) in Missouri, upon MER's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *Missouri Eastern Railroad—Acquisition & Change of Operator Exemption—V and S Railway,* Docket No. FD 36550. In that proceeding, MER has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to acquire: (1) From V and S Railway, LLC, an approximately42.89-mile rail line between milepost 19.0 near Vigus, Mo., and milepost 61.89 near Union, Mo.; and (2) incidental overhead trackage rights over a rail line owned by Union Pacific Railroad Company between milepost 19.0 near Vigus and milepost 10.3 at Rock Island Junction, Mo.

Jaguar states that it will continue in control of MER upon MER's becoming a Class III rail carrier. According to the verified notice, OPTrust indirectly controls JTH, which currently controls, indirectly: Three Class III railroads directly controlled by JRH—Southwestern Railroad, Inc., Texas & Eastern Railroad, LLC, and Wyoming and Colorado Railroad, Inc., (WYCO) (which also does business under the name Oregon Eastern Railroad); two Class III railroads indirectly controlled by JRH through WYCO—Cimarron Valley Railroad, L.C., and Washington Eastern Railroad, LLC; and one Class III railroad indirectly controlled by JTH through its subsidiary Jaguar Transport, LLC—West Memphis Base Railroad, L.L.C. The lines of the rail carriers controlled by JTH and JRH are located in Arkansas, Colorado, Kansas, Missouri, New Mexico, Oklahoma, Oregon, and Washington.

Jaguar states that: (1) The Line does not connect with any other rail lines operated by carriers controlled by JTH or JRH and none of those rail lines connect with each other; (2) the continuance in control transaction is not part of a series of anticipated transactions that would connect the Line with any other rail lines in the JTH or JRH corporate families or that would connect any of those rail lines with each other; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

The earliest this transaction may be consummated is November 24, 2021, the effective date of the exemption (30 days after the verified notice was filed). If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 17, 2021.

All pleadings, referring to Docket No. FD 36551, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on Jaguar's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to Jaguar, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 5, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2021–24583 Filed 11–9–21; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Public Hearing

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: Due to technical issues with the previously scheduled November 4th public hearing, the Susquehanna River Basin Commission will hold a rescheduled public hearing on December 2, 2021. The Commission will hold this hearing both in-person and telephonically. At this public hearing, the Commission will hear testimony on the projects listed in the Supplementary Information section of this notice. The Commission will also hear testimony on a proposed policy, Fee Incentives for the Withdrawal and Consumptive Use of AMD Impacted Waters & Treated Wastewater (formerly the draft Use of Lesser Quality Waters Policy), as well as proposals to amend its Regulatory Program Fee Schedule and a proposed Letter of Understanding (LOU) regarding program coordination between the Susquehanna River Basin Commission and the Pennsylvania Department of Environmental Protection (DEP). Such projects and proposals are intended to be scheduled for Commission action at its next business meeting, tentatively scheduled for December 17, 2021, which will be noticed separately. The public should take note that this public hearing will be the only opportunity to offer oral comment to the Commission for the listed projects and proposals. The deadline for the submission of written comments has been extended to December 13, 2021.

DATES: The public hearing will convene on December 2, 2021, at 6:30 p.m. The public hearing will end at 9:00 p.m. or at the conclusion of public testimony, whichever is earlier. The deadline for the submission of written comments is December 13, 2021.

ADDRESSES: This hearing will be conducted at Commission headquarters at 4423 North Front Street, Harrisburg, PA, with the option to participate by telephone conference. Conference Call # 1–888–387–8686 (toll free), Access Code/PIN: 917 968 6050.

FOR FURTHER INFORMATION CONTACT: Jason Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423 or *joyler@srbc.net.*

Information concerning the applications for the projects is available at the Commission's Water Application and Approval Viewer at *https://www.srbc.net/waav.* Information concerning the proposals can be found at *https://www.srbc.net/about/meetings-events/.* Additional supporting documents are available to inspect and copy in accordance with the Commission's Access to Records Policy at *www.srbc.net/regulatory/policies-guidance/docs/access-to-records-policy-2009-02.pdf.*

SUPPLEMENTARY INFORMATION: The Commission is proposing a policy for Fee Incentives for the Withdrawal and Consumptive Use of AMD Impacted Waters & Treated Wastewater (formerly the draft Use of Lesser Quality Waters Policy, which was revised based on prior public comment). This policy would replace the current Policy No. 2009–01. The Commission is also proposing changes to its Regulatory Program Fee Schedule, which it typically does on an annual basis. The Commission is also seeking public comment on the LOU with the Pennsylvania DEP. The LOU would replace the current MOU with DEP signed in 1999. The public hearing will cover the following projects:

Projects Scheduled for Action:

1. *Project Sponsor and Facility:* Artesian Water Company, Inc., New Garden Township, Chester County, Pa. Application for renewal of the transfer of water of up to 3.000 mgd (30-day average) from the Chester Water Authority (Docket No. 19961105).

2. *Project Sponsor and Facility:* Chesapeake Appalachia, L.L.C. (Susquehanna River), Terry Township, Bradford County, Pa. Application for renewal and modification of surface water withdrawal of up to 3.000 mgd (peak day) (Docket No. 20170904).

3. *Project Sponsor and Facility:* Clearfield Municipal Authority, Pike Township, Clearfield County, Pa. Modification to extend the approval term of the groundwater withdrawal approval (Docket No. 19910704) to allow for project improvements.

4. *Project Sponsor and Facility:* Deep Woods Lake LLC, Dennison Township, Luzerne County, Pa. Applications for groundwater withdrawal of up to 0.200 mgd (30-day average) from Well SW–5 and consumptive use of up to 0.467 mgd (peak day).

5. *Project Sponsor and Facility:* Municipal Authority of the Township of East Hempfield dba Hempfield Water Authority, East Hempfield Township, Lancaster County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.353 mgd from Well 6, 0.145 mgd from Well 7, 1.447 mgd from Well 8, and 1.800 mgd from Well 11, and Commission-initiated modification to Docket No. 20120906, which approves withdrawals from Wells 1, 2, 3, 4, and 5 and Spring S–1 (Docket Nos. 19870306, 19890503, 19930101, and 20120906).

6. *Project Sponsor:* Farmers Pride, Inc. Project Facility: Bell & Evans Plant 3, Bethel Township, Lebanon County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.108 mgd from Well PW–1, 0.139 mgd from Well PW–2, and 0.179 mgd from Well PW–4.

7. *Project Sponsor:* Glenn O. Hawbaker, Inc. Project Facility: Naginey Facility, Armagh Township, Mifflin County, Pa. Applications for groundwater withdrawal of up to 0.300 mgd (30-day average) from the Quarry Pit Pond and consumptive use of up to 0.310 mgd (peak day).

8. *Project Sponsor:* Hydro Recovery-Antrim LP. Project Facility: Antrim Treatment Plant (Antrim No. 1 Mine Discharge and Backswitch Mine Discharge), Duncan Township, Tioga County, Pa. Applications for renewal of surface water withdrawal of up to 1.872 mgd (peak day) and for consumptive use of up to 1.872 mgd (30-day average) (Docket No. 20090902).

9. *Project Sponsor and Facility:* Project Sponsor and Facility: Mifflin County Municipal Authority (formerly The Municipal Authority of the Borough of Lewistown), Armagh Township, Mifflin County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.770 mgd from McCoy Well 1, 1.152 mgd from McCoy Well 2, and 0.770 mgd from the Milroy Well.

10. *Project Sponsor:* Nature's Way Purewater Systems, Inc. Project Facility: USHydrations—Dupont Bottling Plant, Dupont Borough, Luzerne County, Pa. Modification to increase consumptive use (peak day) by an additional 0.100 mgd, for a total consumptive use of up to 0.449 mgd (Docket No. 20110618).

11. *Project Sponsor and Facility:* Shippensburg Borough Authority, Southampton Township, Cumberland County, Pa. Application for renewal of groundwater withdrawal of up to 2.000 mgd (30-day average) from Well 3 (Docket No. 20070305).

12. *Project Sponsor and Facility:* Walker Township Water Association, Inc., Walker Township, Centre County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.432 mgd from Zion Well 2 and 0.320 mgd from Hecla Well 1 (Docket Nos. 19910302 and 19950906).

Project Scheduled for Action Involving a Diversion:

1. *Project Sponsor and Facility:* Chester Water Authority, New Garden Township, Chester County, Pa. Applications for renewal of consumptive use and for an out-of-basin diversion of up to 3.000 mgd (30-day average) (Docket No. 19961104).

Commission-Initiated Project Approval Modification:

1. *Project Sponsor and Facility:* Elkview Country Club, Greenfield and Fell Townships, Lackawanna County, Pa. Conforming the grandfathering amount with the forthcoming determination for a surface water withdrawal up to 0.144 mgd (30-day average) from Crystal Lake (Docket No. 20021002).

Opportunity to Appear and Comment: Interested parties may attend or call into the hearing to offer comments to the Commission on any business listed above required to be the subject of a public hearing. Given the telephonic option to the hearing, the Commission

strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by emailing Jason Oyler at *joyler@srbc.net* prior to the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing. Access to the building and the hearing via telephone will begin at 6:15 p.m. Guidelines for the public hearing are posted on the Commission's website, *www.srbc.net,* prior to the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be the subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110–1788, or submitted electronically through *https://www.srbc.net/regulatory/public-comment/*. Comments mailed or electronically submitted must be received by the Commission on or before December 13, 2021 to be considered.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: November 5, 2021.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2021–24587 Filed 11–9–21; 8:45 am]

BILLING CODE 1740–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Drone Advisory Committee: Notice of Charter Amendments

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

ACTION: Notice of charter amendments.

SUMMARY: This notice announces charter amendments of the Drone Advisory Committee, a Federal advisory committee that works with industry, community stakeholders, and the public to improve the development of the FAA's regulations. The charter amendments were filed with Congress and took effect on October 26, 2021. The Committee will operate for 2 years unless its charter is renewed in accordance with the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Kamisha Walker or Gary Kolb, UAS Integration Office, Federal Aviation Administration, telephone (202) 267–4441; email *kamisha.walker@faa.gov* or *gary.kolb@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), the FAA is giving notice of amendments to the charter for the Drone Advisory Committee (DAC), which is renamed the Advanced Aviation Advisory Committee (AAAC). The DAC is a broad-based Federal advisory committee that provides the FAA with advice on key UAS integration issues by helping to identify challenges and prioritize improvements. The committee advises the DOT through the FAA on improving the efficiency and safety of integrating advanced aviation technologies—including unmanned aircraft systems (UAS) and advanced air mobility (AAM), into the National Airspace System (NAS)—while equipping and enabling communities to inform how UAS, AAM and other technologies may operate in ways that are beneficial to those communities. Members represent airports and airport communities; pilot and controller labor groups; local, state, and tribal governments; navigation, communication, surveillance, and air traffic management capability providers; research, development, and academia; agricultural interests, traditional piloted aviation operators; UAS hardware component manufacturers; UAS manufacturers; corporate UAS operators; citizen UAS Operators; UAS software application manufacturers; advanced air mobility; community advocates; and industry associations or other specific areas of interest as determined by the FAA Administrator or Secretary of Transportation. For more information see the AAAC website at: *https://www.faa.gov/uas/programs_partnerships/advanced_aviation_advisory_committee/*.

Issued in Washington, DC.

Erik W. Amend,

Manager, Executive Office, AUS–10, UAS Integration Office, Federal Aviation Administration.

[FR Doc. 2021–24511 Filed 11–9–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Drone Advisory Committee: Notice of Solicitation of Nominations for Appointment to the Newly Proposed Advanced Aviation Advisory Committee (AAAC)—Previously Known as Drone Advisory Committee

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

ACTION: Solicitation of nominations for appointment to the Advanced Aviation Advisory Committee (AAAC).

SUMMARY: This notice announces a solicitation for nominations for membership on the Advanced Aviation Advisory Committee (AAAC)—previously known as Drone Advisory Committee. This solicitation supersedes the previous Solicitation of Nominations for Appointment to the Drone Advisory Committee published June 18, 2020.

DATES: Nominations must be received no later than 6:00 p.m. Eastern Time on January 10, 2022. Nominations received after the above due date may be retained for evaluation for future AAAC vacancies after all other nominations received by the due date have been evaluated and considered.

ADDRESSES: Nominations can be submitted electronically (by email) to Kamisha Walker in the FAA's UAS Integration Office, at *kamisha.walker@faa.gov*. The subject line should state ''2022 AAAC Nomination.'' The body of the email must contain content or attachments that address all requirements as specified in the below ''Materials to Submit'' section. Incomplete/partial submittals as well as those that exceed the specified document length may not be considered for evaluation. An email confirmation from the FAA will be sent upon receipt of all complete nominations that meet the criteria in the ''Materials to Submit'' section. Anyone wishing to submit an application by paper may do so by contacting Kamisha Walker at *kamisha.walker@faa.gov* or by calling 202–267–4441. The FAA will notify those appointed by the Secretary to serve on the AAAC in writing.

FOR FURTHER INFORMATION CONTACT: Kamisha Walker at *kamisha.walker@faa.gov* or by calling 202–267–4441. Additional information on the AAAC, including the current roster, charter, and previous meeting minutes may be found at: *https://www.faa.gov/uas/programs_partnerships/advanced_aviation_advisory_committee/*.

SUPPLEMENTARY INFORMATION:

Background

The AAAC is an advisory committee established under DOT's authority, in accordance with the provisions of the Federal Advisory Committee Act (FACA) as amended, Public Law 92–463, 5 U.S.C. App. 2. The objective of the AAAC is to provide independent advice and recommendations to the FAA and in response to specific taskings received directly from the FAA. The advice, recommendations, and taskings relate to improving the efficiency and safety of integrating advanced aviation technologies—including unmanned aircraft systems (UAS) and advanced air mobility (AAM), into the National Airspace System (NAS)—while equipping and enabling communities to inform how UAS, AAM and other technologies may operate in ways that are least impactful to those communities. In response to FAA requests, the AAAC may provide the FAA with information that may be used for tactical and strategic planning purposes.

This notice seeks to fill current and future vacancies on the AAAC and does not affect the status of AAAC members whose terms have not expired.

Description of Duties

The AAAC acts solely in an advisory capacity and does not exercise program management responsibilities. Decisions directly affecting implementation of transportation policy will remain with the FAA Administrator and the Secretary of Transportation. The AAAC duties include:

a. Undertaking tasks only assigned by the FAA.

b. Deliberating on and approving recommendations for assigned tasks in meetings that are open to the public.

c. Responding to ad hoc informational requests from the FAA and/or providing input to the FAA on the overall AAAC structure (including structure of the subcommittees and or task groups).

Membership: The FAA will submit recommendations for membership to the Secretary of Transportation, who will appoint members to the AAAC. The membership must be equitably balanced in terms of points of view represented and the functions performed. The stakeholder groups represented on the AAAC include the following:

a. Airports and Airport Communities
b. Labor (controllers, pilots)
c. Local, State, Tribal and/or Territorial Government or Appropriate International Entity
d. Navigation, Communication, Surveillance, and Air Traffic Management Capability Providers
e. Research, Development, and Academia
f. Traditional Manned Aviation Operators
g. UAS Hardware Component Manufacturers
h. UAS Manufacturers
i. Corporate UAS Operators
j. Citizen UAS Operators
k. UAS Software Application Manufacturers
l. Agricultural Interests
m. Advanced Air Mobility
n. Community Advocate
o. Industry Associations or other specific areas of interest

All AAAC members serve at the pleasure of the Secretary of Transportation. To the extent practicable, the membership of the AAAC shall include persons of diverse backgrounds in race, ethnicity, religion, sexual orientation, and gender. The AAAC will have no more than 41 members. Other membership terms include:

a. An appointment of up to two years.

b. Service without charge and without government compensation. Representation of a particular interest of employment, education, experience, or affiliation with a specific aviation related organization.

c. Ability to attend all AAAC meetings (estimated three meetings per year).

Qualifications: Candidates must be in good public standing and currently serve as a member of their organization's core senior leadership team with the ability to make decisions on UAS or AAM related matters. In rare circumstances, membership may be granted to uniquely qualified individuals who do not meet the previous requirement. Members appointed solely for their individual expertise will serve as Special Government Employees.

Materials to Submit: Candidates are required to submit, in full, the following materials to be considered for AAAC membership. Failure to submit the required information may disqualify a candidate from the review process.

a. A short biography of the nominee, including professional and academic credentials.

b. A résumé or curriculum vitae, which must include relevant job experience, qualifications, as well as contact information (email, telephone, and mailing address).

c. A one-page statement describing how the candidate will benefit the AAAC, considering current membership and the candidate's unique perspective that will advance the conversation. This statement must also identify a primary and secondary interest to which the candidate's expertise best aligns. Finally, candidates should state their previous experience on Federal Advisory Committees and/or Aviation Rulemaking Committees (if any), their level of knowledge in their above stakeholder groups, and the size of their constituency they represent or are able to reach.

Up to three letters of recommendation may be submitted but are not required. Each letter may be no longer than one page. Evaluations will be based on the materials submitted.

Issued in Washington, DC.

Erik W. Amend,

Manager, Executive Office, AUS–10, UAS Integration Office, Federal Aviation Administration.

[FR Doc. 2021–24512 Filed 11–9–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before December 10, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety

Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 4, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA—GRANTED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
10232–M	Illinois Tool Works Inc	173.304(d), 173.167, 173.306(i).	To modify the special permit to remove an obsolete proper shipping name from the special permit.
11947–M	Patts Fabrication, Inc	173.241, 173.242, 173.243, 177.834(h).	To modify the special permit to authorize additional hazmat to be transported.
16231–M	Thales Alenia Space	172.101(j), 173.301(f), 173.302a(a)(1), 173.304a(a)(2).	To modify the special permit to authorize additional 2.3 hazmat.
20336–M	Geotek Coring Inc	173.3(d)	To modify the special permit to authorize up to 36 salvage cylinders in an ISO container.
21134–N	GATX Corporation	179.100–4, 179.200–4	To authorize the use of certain jacketed DOT specification tank cars that have been repaired pursuant to Applicant's Jacket Patch Procedure.
21163–N	United Initiators, Inc	178.345–10(b)(1)	To authorize the transportation in commerce of organic peroxides in cargo tank motor vehicles that utilize alternative pressure relief devices, specifically 4–12″ diameter rupture disks (See Drawing) in lieu of the prescribed reclosing PRD.
21178–N	Meggitt Safety Systems, Inc.	173.302(a)(1)	To authorize the manufacture, mark, sale, and use of non-DOT specification small, high pressure cylinders of welded construction similar to a DOT 3HT.
21195–M	Panasonic Energy Corporation of America.	173.185(c)	To modify the special permit to authorize additional packaging.
21203–N	Daklapack US Inc	173.199(a)	To authorize the transportation in commerce of category B biological samples without rigid outer packaging.
21212–N	The Boeing Company	178.955	To authorize the transportation in commerce of environmentally hazardous substances contained in non-DOT specification bulk packagings by motor vehicle.
21213–M	Space Exploration Technologies Corp.	172.300, 172.400, 173.302(a).	To modify the special permit to increase the number of cylinders and add additional routes.
21237–N	Mauser USA, LLC	178.503(a)(3)(ii)	To authorize the use of certain 1H1 plastic drums with markings that do not include the letter identifying the performance standard.
21240–M	Volkswagen Group of America Chattanooga Operations, LLC.	172.101(j)	To modify the special permit to authorize an additional lithium ion battery.
21242–N	Myers Container, LLC	178.503(a)(10)	To authorize the use of certain UN Standard steel drums exceeding 100 L in which the marking required by 49 CFR 178.503(a)(10) on the bottom of the drum has a different year of manufacture than the top head or side of the drum.
21258–N	Veolia Es Technical Solutions, LLC.	173.224(c), 173.21(f), 173.124(a)(2)(iii)(C), 173.124(a)(2)(iii)(D).	To authorize the one-time one-way transportation of self-reactive waste for disposal.
21273–N	Spaceflight, Inc	173.185(e)(3)	To authorize the transportation in commerce of low production and prototype lithium batteries contained in equipment by motor vehicle.
21278–N	ConocoPhillips Alaska, Inc	172.101(j), 173.318	To authorize the transportation in commerce of refrigerated liquid nitrogen aboard cargo-only aircraft within Alaska.
21284–N	General Motors LLC	173.185(a)(1)	To authorize the transportation in commerce via motor vehicle of production batteries that have not been proven to be of a type that meets the testing requirements of the UN Manual of Test and Criteria Section 38.3.
21291–N	Praxair Distribution, Inc	173.24(c), 173.25	To authorize the transportation in commerce of a corrosive solid, toxic, n.o.s. in a non-DOT specification package (fluorine generator) to Korea for repair.

SPECIAL PERMITS DATA—GRANTED—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21295–N	Kavok Eir, Tov	172.101(j), 172.204(c)(3), 172.204(c)(3), 173.27, 175.30(a)(1).	To authorize the transportation in commerce of forbidden explosives by cargo aircraft.

SPECIAL PERMITS DATA—DENIED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof

SPECIAL PERMITS DATA—WITHDRAWN

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof

[FR Doc. 2021–24561 Filed 11–9–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modifications to Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 26, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 2, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
11993–M	Key Safety Systems, Inc	173.301(a)(1), 173.302(a)(1) ..	To modify the special permit to authorize a different pressure test and alternative safety control measures. (modes 1, 2, 3, 4, 5)
12135–M	Daicel Safety Systems Inc	173.301(a)(1), 173.302a(a), 178.65(c)(3).	To modify the special permit to remove the flattening test requirement and authorize alternative markings. (modes 1, 2, 3, 4)
14546–M	Linde Gas & Equipment Inc ...	180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to authorize a 15-year periodic requalification interval for certain cylinders. (modes 1, 2, 3, 4)
14799–M	Joyson Safety Systems Sachsen GmbH.	173.301(a), 173.302(a)(1)	To modify the special permit to authorize a different pressure test and alternative safety control measures. (modes 1, 2, 3, 4, 5)
14833–M	Joyson Safety Systems Aschaffenburg GmbH.	178.65(f)(2), 173.301(a), 173.302(a)(2).	To modify the special permit to authorize a different pressure test and alternative safety control measures. (modes 1, 2, 3, 4, 5)
14919–M	Joyson Safety Systems Acquisition LLC.	173.301(a)(1), 173.302a, 178.65(f)(2).	To modify the special permit to authorize a different pressure test and alternative safety control measures. (modes, 1, 2, 3, 4, 5)
15372–M	Equipo Automotriz Americana, S.A. de C.V.	173.301(a)(1), 173.302(a)	To modify the special permit to authorize a different pressure test and alternative safety control measures. (modes 1, 2, 3, 4, 5)
15713–M	Bulk Tank International, S. DE R.L. DE C.V.	178.345–2, 178.346–2, 178.347–2, 178.348–2.	To modify the special permit to authorize the use of the 2017 Edition of the ASME Code. (mode 1)
16318–M	Technical Chemical Company	173.304(d), 173.167(a)	To modify the special permit to authorize an additional hazardous material. (modes 1, 2, 3, 4, 5)
20907–M	Versum Materials US, LLC	171.23(a)(1), 171.23(a)(3)	To modify the special permit to replace paragraph 7.b.(6) with a 5-year service life restriction. (modes 1, 3)

SPECIAL PERMITS DATA—Continued

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21018–M	Packaging and Crating Technologies, LLC.	172.200, 172.300, 172.400, 172.600, 172.700(a), 173.185(b), 173.185(c), 173.185(f).	To modify the special permit to clarify certain requirements, to remove certain packaging specifications, and to remove certain paperwork requirements. (modes 1, 2, 3)
21216–M	Bren-Tronics, Inc	172.101(j)	To modify the special permit to authorize alternative dunnage material. (mode 4)
21279–M	Davey Bickford USA, Inc	173.56(b)	To modify the special permit to authorize passenger-carrying aircraft as a mode. (mode 5)

[FR Doc. 2021–24562 Filed 11–9–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 10, 2021.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Safety General Approvals and Permits Branch, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–13, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 4, 2021.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21293–N	Harnyss, LLC	173.311	To authorize the manufacture, mark, sale and use of a specially designed storage device consisting of a non-DOT specification cylinder similar to a DOT 3AL cylinder for use in transporting hydrogen absorbed in metal hydride, Division 2.1. (modes 1, 4)
21294–N	Trane U.S. Inc	173.306(e)(1)(i), 173.306(e)(1)(ii).	To authorize the transportation in commerce of large refrigerating machines where each pressure vessel containing A2L refrigerant gases in quantities exceeding 50 pounds and an aggregate of more than 100 pounds. (modes 1, 2, 3)
21296–N	Lockheed Martin Corporation	173.185(e)(1)	To authorize the transportation in commerce of low production lithium batteries in alternative packaging via motor vehicle. (mode 1)
21297–N	Luxfer Canada Limited	178.75(d)(3), 180.205(g)(1)	To authorize the manufacture, marking, sale and use of UN/ISO composite cylinders per CFR 178.71, and specification ISO 11119–2 for use in MEGCs in accordance with CFR 178.75. (modes 1, 2, 3, 4)
21298–N	Linde Gas & Equipment Inc	173.301(f), 173.301(g)(1)(ii), 173.304a(c).	To authorize the transportation in commerce of UN1070, nitrous oxide, in cylinders interconnected by a manifold. (modes 1, 2, 3)
21299–N	Orbital Sciences LLC	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4)
21300–N	Distributor Operations, Inc	172.200, 172.300, 172.400, 173.159(e), 173.185(b)(1).	To authorize the transportation in commerce of wet acid batteries and lithium batteries on the same vehicle, without being subject to the requirements of the Hazardous Materials Regulations. (mode 1)
21301–N	DGM Italia SRL	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg by cargo-only aircraft. (mode 4)

[FR Doc. 2021–24563 Filed 11–9–21; 8:45 am]
BILLING CODE P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Community Development Advisory Board; Notice of Open Meeting

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Community Development Advisory Board (the Advisory Board), which provides advice to the Director of the Community Development Financial Institutions Fund (CDFI Fund). This meeting will be conducted virtually. A link to the livestream of the meeting will be posted at the top of *www.cdfifund.gov/cdab* the morning of the meeting.

DATES: The meeting will be held from 3:30 p.m. to 5:00 p.m. Eastern Time on Tuesday, November 30, 2021.

Submission of Written Statements: Participation in the discussions at the meeting will be limited to Advisory Board members, Department of the Treasury staff, and certain invited guests. Anyone who would like to have the Advisory Board consider a written statement must submit it by 5:00 p.m. Eastern Time on Monday, November 22, 2021. Send electronic statements to *AdvisoryBoard@cdfi.treas.gov.*

In general, the CDFI Fund will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for virtual public inspection and copying. The CDFI Fund is open on official business days between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time. You can make arrangements to virtually inspect statements by emailing *AdvisoryBoard@cdfi.treas.gov.* All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Contact Bill Luecht, Senior Advisor, Office of Legislative and External Affairs, CDFI Fund; (202) 653–0322 (this is not a toll free number); or *AdvisoryBoard@cdfi.treas.gov.* Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at *www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION: Section 104(d) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325), which created the CDFI Fund, established the Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the CDFI Fund (who has been delegated the authority to administer the CDFI Fund) on the policies regarding the activities of the CDFI Fund. The Advisory Board does not advise the CDFI Fund on approving or declining any particular application for monetary or non-monetary awards.

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Bill Luecht, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the Advisory Board will convene an open meeting, which will be conducted virtually, from 3:30 p.m. to 5:00 p.m. Eastern Time on Tuesday, November 30, 2021. Members of the public who wish to view the meeting can access the link to the livestream of the meeting at the top of *www.cdfifund.gov/cdab.*

The Advisory Board meeting will include remarks by Treasury officials, the swearing-in of new members, a report from the CDFI Fund Director on the activities of the CDFI Fund since the last Advisory Board meeting, and a discussion of future priorities.

Authority: 12 U.S.C. 4703.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2021–24537 Filed 11–9–21; 8:45 am]
BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice, request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On August 13, 2021, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to extend for three years, without revision, the Foreign Branch Report of Condition (FFIEC 030) and the Abbreviated Foreign Branch Report of Condition (FFIEC 030S), which are currently approved collections of information. The comment period for this notice expired on October 12, 2021. As described in the **SUPPLEMENTARY INFORMATION** section, the agencies will extend the FFIEC 030 and FFIEC 030S without revision as proposed. In addition, the agencies will make clarifying revisions to the instructions in response to a comment received. The agencies are giving notice that they are sending the collections to OMB for review.

DATES: Comments must be submitted on or before December 10, 2021.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the ''FFIEC 030 or FFIEC 030S,'' will be shared among the agencies.

OCC: You may submit comments, which should refer to ''FFIEC 030 or FFIEC 030S,'' by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, Attention: 1557–0099, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''1557–0099'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public

disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the following method:

• Viewing Comments Electronically: Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' link on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0099.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

Board: You may submit comments, which should refer to ''FFIEC 030 or FFIEC 030S,'' by any of the following methods:

• *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

• *Email: regs.comments@federalreserve.gov.* Include ''FFIEC 030 or FFIEC 030S'' in the subject line of the message.

• *Fax:* (202) 395–6974.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *https://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.

FDIC: You may submit comments, which should refer to ''FFIEC 030 or FFIEC 030S,'' by any of the following methods:

• *Agency website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC's website.

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

• *Email: comments@FDIC.gov.* Include ''FFIEC 030 or FFIEC 030S'' in the subject line of the message.

• *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

• *Public Inspection:* All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the report forms for the FFIEC 030 and FFIEC 030S can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies propose to extend for three years, without revision, the FFIEC 030 and the FFIEC 030S.

Report Title: Foreign Branch Report of Condition and Abbreviated Foreign Branch Report of Condition.

Form Number: FFIEC 030 and FFIEC 030S.

Frequency of Response: Annually and quarterly for significant branches.

Affected Public: Business or other for-profit.

OCC

OMB Control Number: 1557–0099.

Estimated Number of Respondents: 56 quarterly respondents (FFIEC 030); 46 annual respondents (FFIEC 030); 15 annual respondents (FFIEC 030S).

Estimated Average Burden per Response: 3.4 burden hours (FFIEC 030); 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 926 burden hours.

Board

OMB Control Number: 7100–0071.

Estimated Number of Respondents: 20 quarterly respondents (FFIEC 030); 12 annual respondents (FFIEC 030); 7 annual respondents (FFIEC 030S).

Estimated Average Burden per Response: 3.4 burden hours (FFIEC 030); 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 316 burden hours.

FDIC

OMB Control Number: 3064–0011 (FDIC).

Estimated Number of Respondents: 1 quarterly respondent (FFIEC 030); 3 annual respondents (FFIEC 030); 3 annual respondents (FFIEC 030S).

Estimated Average Burden per Response: 3.4 burden hours (FFIEC 030); 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 25 burden hours.

I. Legal Basis and Need for Collection

This information collection is mandatory under the following authorities: 12 U.S.C. 602 (Board); 12 U.S.C. 161 and 602 (OCC); and 12 U.S.C. 1828 (FDIC). This information collection is given confidential treatment under 5 U.S.C. 552(b)(4) and (8).

The FFIEC 030 collects asset and liability information for foreign branches of insured U.S. banks and insured U.S. savings associations (U.S. depository institutions) and is required for regulatory and supervisory purposes. The information is used to analyze the foreign operations of U.S. institutions. All foreign branches of U.S. institutions regardless of charter type file this report as provided in the instructions to the FFIEC 030 and FFIEC 030S.

A U.S. depository institution generally must file a separate report for each foreign branch, but in some cases may consolidate filings for multiple foreign branches in the same country, as described below.

A branch with either total assets of at least $2 billion or commitments to

purchase foreign currencies and U.S. dollar exchange of at least $5 billion as of the end of a calendar quarter is considered a ''significant branch'' and must file the FFIEC 030 report quarterly. A U.S. depository institution with a foreign branch having total assets in excess of $250 million that does not meet either of the criteria to file quarterly must file the entire FFIEC 030 report for this foreign branch on an annual basis as of December 31.

A U.S. depository institution with a foreign branch having total assets of $50 million or more, but less than or equal to $250 million that does not meet the criteria to file the FFIEC 030 report must file the FFIEC 030S report for the foreign branch on an annual basis as of December 31. A U.S. depository institution with a foreign branch having total assets of less than $50 million is exempt from filing the FFIEC 030 and 030S reports.

Foreign branches that meet the criteria for reporting on a quarterly basis must not be consolidated with any other branch. U.S. depository institutions may, at their option, consolidate the figures for all other branches located in the same country.

II. Current Actions

On August 13, 2021, the agencies requested comment for 60 days on a proposal to extend for three years, without revision, the FFIEC 030 and FFIEC 030S.[1] The comment period for the proposal ended on October 12, 2021, and the agencies received one comment.

The commenter, an institution, asked the agencies to clarify how to report equity securities with readily determinable fair values not held for trading in the FFIEC 030. The commenter stated that reporting these securities in line 4(b), ''Other securities (debt and equity)'' would align the FFIEC 030 with the Call Report classification. The agencies agree with the commenter's suggestions and will revise the FFIEC 030 instructions accordingly. The agencies will extend the report forms without revision.

III. Request for Comment

Public comment is requested on all aspects of this notice. Comment is specifically invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted to the Board in response to this notice will be shared with the other agencies. All comments will become a matter of public record.

Patrick T. Tierney,

Assistant Director, Bank Advisory, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 3, 2021.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2021–24519 Filed 11–9–21; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P, 6714–01–P

[1] 86 FR 44768 (Aug. 13, 2021).

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 Internal Revenue Service, 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. The IRS is soliciting comments concerning Revenue Procedure 2015–41—Section 482—Allocation of Income and Deductions Among Taxpayers.

DATES: Written comments should be received on or before January 10, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Sara Covington, at (737) 800–6149, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2015–41—Section 482—Allocation of Income and Deductions Among Taxpayers.

OMB Number: 1545–1503.

Regulation Project Number: Revenue Procedure 2015–41.

Abstract: This revenue procedure provides guidance on the process of requesting and obtaining advance pricing agreements from the advance pricing agreement and mutual agreement program(''APMA''), to process applications, negotiate agreements, and to verify compliance with agreements and whether agreements require modification.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; individuals or households.

Estimated Number of Respondents: 390.

Estimated Time per Respondent: 27.9.

Estimated Total Annual Burden Hours: 10,900.

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: November 4, 2021.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2021–24548 Filed 11–9–21; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8892

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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. The IRS is soliciting comments concerning Form 8892, Application for Automatic Extension of Time to File Form 709 and/or Payment of Gift/Generation-Skipping Transfer Tax.

DATES: Written comments should be received on or before January 10, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (737) 800–6149 or through the internet, at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Automatic Extension of Time to File Form 709 and/or Payment of Gift/Generation-Skipping Transfer Tax.

OMB Number: 1545–1913.

Form Number: Form 8892.

Abstract: Form 8892 was created to serve a dual purpose. First, the form enables the taxpayers to request an automatic 6-month extension of time to file Form 709 when they are not filing an individual income tax extension using Form 4868. Second, to make a payment of gift tax when you're applying for an extension of time to file Form 709 (including payment of any generation-skipping transfer (GST) tax from Form 709).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 21.

Estimated Time per Respondent: 43 minutes.

Estimated Total Annual Burden Hours: 16.

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: November 4, 2021.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2021–24520 Filed 11–9–21; 8:45 am]

BILLING CODE 4830–01–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 Internal Revenue Service, 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. The IRS is soliciting comments concerning safe harbor for valuation and mark to market accounting method for dealers under section 475.

DATES: Written comments should be received on or before January 10, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or (737) 800–6149 or, through the internet at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Safe Harbor for Valuation and Mark to Market Accounting Method for Dealers Under Section 475.

OMB Number: 1545–1945.

Regulation Project Number: TD 9328 and TD 8700.

Abstract: These documents set forth an elective safe harbor that permits dealers in securities and dealers in commodities to elect to use the values of positions reported on certain financial statements as the fair market values of those positions for purposes of section 475 of the Internal Revenue Code (Code). This safe harbor is intended to reduce the compliance burden on taxpayers and to improve the administrability of the valuation requirement of section 475 for the IRS. TD 8700 contains final regulations providing guidance to enable taxpayers to comply with the mark-to-market requirements applicable to dealers in securities.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 15,708.

Estimated Average Time per Respondent: 3 hours, 19 minutes.

Estimated Total Annual Burden Hours: 52,182.

The following paragraph applies to all the collections of information covered by this notice.

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 collectionof 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: November 4, 2021.

Sara L. Covington,

IRS Tax Analyst.

[FR Doc. 2021–24521 Filed 11–9–21; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 86 Wednesday,
No. 215 November 10, 2021

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 Northern Spotted Owl; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2020–0050; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BF01

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; withdrawal and revision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), revise the designation of critical habitat for the northern spotted owl (*Strix occidentalis caurina*) under the Endangered Species Act of 1973, as amended (ESA or Act), by withdrawing the January 15, 2021, final rule that would have been effective December 15, 2021, and which would have excluded approximately 3.4 million acres (1.4 million hectares) of designated critical habitat for the northern spotted owl (January Exclusions Rule); and instead as we proposed on July 20, 2021, we now exclude approximately 204,294 acres (82,675 hectares) in Benton, Clackamas, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lane, Lincoln, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties, Oregon, under section 4(b)(2) of the Act.

DATES: As of November 10, 2021, FWS is withdrawing the final rule published January 15, 2021, at 86 FR 4820, delayed on March 1, 2021, at 86 FR 11892, and further delayed on April 30, 2021 at 86 FR 22876. This rule is effective December 10, 2021.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0050 and at *https://www.fws.gov/oregonfwo.*

- Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0050.
- The coordinates from which the Service generated the maps are included in the decision file for the rulemaking and are available at *https://www.regulations.gov* at Docket No. FWS–R1–ES–2020–0050 and at *https://www.fws.gov/oregonfwo.*
- The Geographic Information System data reflecting the revised critical habitat units can be downloaded at *https://ecos.fws.gov/ecp/species/1123#crithab* under the heading Critical Habitat Spatial Extents.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Ph.D., State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Portland, OR 97266; telephone 503–231–6179. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. We need to publish a rule in order to exclude areas from northern spotted owl designated critical habitat under section 4(b)(2) of the Act.

What this rule does. This rule revises the designation of critical habitat for the northern spotted owl by withdrawing the exclusion of approximately 3.4 million acres as set forth in the January Exclusions Rule, and excluding instead approximately 204,294 acres (82,675 hectares).

Basis for this rule. Under section 4(b)(2) of the Act, 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. This revision to critical habitat excludes 204,294 acres (82,675 hectares) in Benton, Clackamas, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lane, Lincoln, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties, Oregon, under section 4(b)(2) of the Act.

The Service is excluding lands that are within the Harvest Land Base land-use allocation described by the U.S. Department of the Interior Bureau of Land Management (BLM) in two recently revised resource management plans (RMPs) for areas it manages in Oregon: The Northwestern Oregon and Coastal Oregon Record of Decision and Resource Management Plan (BLM 2016a) and the Southwestern Oregon Record of Decision and Resource Management Plan (BLM 2016b). The BLM consulted with the Service on the effects of those RMPs, and in our resulting Biological Opinion, we found the BLM's proposed harvest over time of those areas allocated to the Harvest Land Base would not result in destruction or adverse modification of northern spotted owl critical habitat (FWS 2016, pp. 626–703). We are also excluding lands that were previously managed by the BLM under the RMPs but were subsequently transferred in trust to certain Indian Tribes pursuant to Federal legislation.

Previous Federal Actions

On December 4, 2012, we published in the **Federal Register** (77 FR 71876) a final rule designating revised critical habitat for the northern spotted owl. For additional information on previous Federal actions concerning the northern spotted owl, refer to that December 4, 2012, final rule.

In 2013, the December 4, 2012, revised critical habitat designation was challenged in court in *Carpenters Industrial Council et al.* v. *Bernhardt et al.,* No. 13–361–RJL (D.D.C) (now retitled *Pacific Northwest Regional Council of Carpenters et al.* v. *Bernhardt et al.* with the substitution of named parties). In 2015, the district court ruled that the plaintiffs lacked standing. The D.C. Circuit Court of Appeals reversed and remanded, and the case remained pending before the district court.

On April 13, 2020, we entered into a stipulated settlement agreement resolving the litigation. The settlement agreement was approved and ordered by the court on April 26, 2020, and the case dismissed. Under the terms of the settlement agreement, the Service agreed to submit a proposed revised critical habitat rule to the **Federal Register** that identified proposed exclusions under section 4(b)(2) of the Act by July 15, 2020, and to submit to the **Federal Register** a final revised critical habitat rule on or before December 23, 2020, or withdraw the proposed rule by that date if we determined not to exclude any areas from the designation under section 4(b)(2) of the Act. We delivered a proposed rule to the **Federal Register** on July 15, 2020, which was published on August 11, 2020 (85 FR 48487), proposing to exclude 204,653 acres (82,820 hectares) within 15 counties in Oregon under section 4(b)(2) of the Act. We opened a 60-day comment period on the August 11, 2020, proposed rule, which closed on October 13, 2020. On January 15, 2021, we published in the **Federal Register** the January Exclusions Rule (86 FR 4820), excluding approximately 3,472,064 acres (1,405,094 hectares) within 45 counties in Washington, Oregon, and California under section 4(b)(2) of the Act. Our August 11, 2020, proposed rule (85 FR 48487) and the January Exclusions Rule met the stipulations of the settlement agreement.

The initial effective date of the January Exclusions Rule was March 16, 2021. On March 1, 2021, we extended the effective date of the January Exclusions Rule to April 30, 2021 (86 FR 11892). At that time, we also opened a 30-day comment period, inviting comments on the impact of the delay of the effective date of the January Exclusions Rule, as well as comments on issues of fact, law, and policy raised by that final rule. After considering comments received in response to our March 1, 2021, final rule delaying the effective date, on April 30, 2021, we again extended the effective date of the January Exclusions Rule to December 15, 2021 (86 FR 22876).

On July 20, 2021, we published in the **Federal Register** a proposed revised critical habitat rule in which we proposed to withdraw the January Exclusions Rule, and to exclude 204,797 acres (82,879 hectares) within 15 counties in Oregon (86 FR 38246). The lands proposed for exclusion are the same lands we proposed for exclusion on August 11, 2020, with minor corrections in the number of acres.

For the convenience of the reader, the list below provides some **Federal Register** citations of prior rulemaking documents pertaining to the northern spotted owl. This list is not a comprehensive list of all pertinent prior rulemaking documents; instead, it contains only those documents that are referenced frequently in this final rule:

- Final rule to revise the designation of critical habitat: December 4, 2012, 77 FR 71876
- Proposed rule to revise the designation of critical habitat: August 11, 2020, 85 FR 48487
- Final rule to revise the designation of critical habitat: January 15, 2021, 86 FR 4820 (January Exclusions Rule)
- Final rule to delay the effective date of the January Exclusions Rule and to request comments: March 1, 2021, 86 FR 11892
- Final rule to further delay the effective date of the January Exclusions Rule: April 30, 2021, 86 FR 22876
- Proposed rule to revise the designation of critical habitat: July 20, 2021, 86 FR 38246

Summary of Factors Affecting the Northern Spotted Owl

Habitat loss was the primary factor leading to the listing of the northern spotted owl as a threatened subspecies in 1990 (55 FR 16114, June 26, 1990), and it continues to be a stressor on the subspecies due to the lag effects of past habitat loss, continued timber harvest, wildfire, and a minor amount from insect and forest disease outbreaks. The most recent rangewide northern spotted owl demographic study (Franklin *et al.* 2021, entire) found that nonnative barred owls are currently the stressor with the largest negative impact on northern spotted owls through competition for resources. The study emphasized the importance of addressing barred owl management and also the importance of maintaining habitat across the range of the northern spotted owl regardless of occupancy to provide areas for recolonization and dispersal (Franklin *et al.* 2021, p. 18). The study also found a significant rate of population decline in northern spotted owls, a rate of 6 to 9 percent annually on 6 demographic study areas, and 2 to 5 percent annually on 5 study areas. Populations dropped to or below 35 percent of historical population numbers on 7 of the study areas, and to or below 50 percent on the remaining 3 areas over a 22-year period (1995–2017).

On non-Federal lands, State regulatory mechanisms have not prevented the continued decline of nesting, roosting and foraging habitat of the northern spotted owl; the amount of northern spotted owl habitat on these lands has decreased considerably over the past two decades, including in geographic areas where Federal lands are lacking. On Federal lands, the Northwest Forest Plan has reduced habitat loss and allowed for the regrowth of northern spotted owl habitat; however, the combined effects of climate change, high-severity wildfire, and past management practices are changing forest ecosystem processes and dynamics.

Summary of Comments and Recommendations

In our July 20, 2021, proposed rule (86 FR 38246), we requested that all interested parties submit written comments by September 20, 2021. We also contacted appropriate Federal, State, and local agencies, and other interested parties and invited them to comment on the proposed rule. A newspaper notice inviting general public comment was published in The Oregonian on July 25, 2021, in the Eureka Times-Standard on July 30, 2021, and in The Olympian on August 6, 2021. We did not receive any requests for a public hearing. We noted in the proposed rule that comments previously submitted in response to our August 11, 2020, proposed revision to critical habitat for the northern spotted owl (85 FR 48487) did not need to be resubmitted, as we would consider them in producing this final rule. We also noted that parties who wanted comments they submitted in response to our March 1, 2021, rule extending the effective date of the January Exclusions Rule considered in this final rule should resubmit their comments.

During the comment period, we received 48 new public comment submissions addressing the proposed withdrawal of the January Exclusions Rule and revised critical habitat designation, in addition to the 572 public comments submitted in response to our original August 11, 2020 proposal to exclude approximately 204,653 acres (82,820 hectares). In addition, one commenter resubmitted their comments in response to our March 1, 2021, rule. Among the submissions on the July 20, 2021, proposed rule were letters from organizations signed by thousands of individuals expressing general support for our proposed rule. Many comments were nonsubstantive in nature, expressing either general support for or opposition to our proposal to withdraw the January Exclusions Rule and exclude 204,797 acres (82,879 hectares), with no supporting information or analysis, or expressing opinions regarding topics not covered within the proposed revised critical habitat rule. We also received many detailed substantive comments with specific rationale for support of or opposition to specific portions of the proposed revised rule.

Below, we summarize and respond to: The substantive comments on the July 20, 2021, proposed rule that were received by the September 20, 2021, deadline; substantive comments we received in response to the August 11, 2020, proposed rule; and resubmitted comments in response to our March 1, 2021, rule. Additionally, we provide explanations when our responses to comments received on our August 11, 2020, proposed rule differ substantially from responses we provided to those same comments in the January Exclusions Rule. Comments received were grouped into general categories and are addressed in the following summary.

Comments on the Withdrawal of the January Exclusions Rule

In order to facilitate the ability to cross-reference our previous responses to comments in the January Exclusions Rule, new and resubmitted comments received by September 21, 2021, on the proposed withdrawal of the January Exclusions Rule and the March 1, 2021, rule delaying the effective date of the January Exclusions Rule until April 30, 2021, are identified alphabetically; comments received on the proposed exclusions and other issues received in

response to both the August 11, 2020, proposed rule and new comments received for the July 20, 2021, proposed rule are identified numerically and follow the same relevant grouping of issues as in the January Exclusions Rule. We did not receive comments concerning the proposed withdrawal of the January Exclusions Rule from Federal agencies, the States, or Tribes.

Comments From Counties

Jackson County (Oregon) submitted a comment letter expressing their support and concurrence with the comment letter submitted by the Association of O&C Counties (AOCC); see *Comment (B)* for a summary of those comments.

Douglas County (Oregon) submitted a comment letter incorporating the American Forest Resource Council (AFRC)'s September 20, 2021, comment letter by reference and provided additional comments urging the Service not to rescind the January Exclusions Rule. Issues raised by Douglas County are incorporated and grouped with similar comments within this rule.

Harney County (Oregon) submitted a comment letter urging the Service not to rescind the January Exclusions Rule. Issues raised by Harney County are incorporated and grouped with similar comments within this rule.

Lewis and Skamania Counties (Washington) submitted a comment letter incorporating the September 20, 2021, comment letter of the AFRC by reference and provided other comments that are incorporated and grouped with similar comments within this rule.

Klickitat County (Washington) submitted a comment letter incorporating Lewis and Skamania Counties' comment letter by reference and provided other comments that are incorporated and grouped with similar comments within this rule.

Public Comments

Comment (A): Commenters that opposed any exclusions from critical habitat stated that retaining and expanding critical habitat and conserving mature forests will provide significant economic benefits to communities by providing ecosystem services such as: Clean water, climate stability, fire resilience, fish and wildlife, recreation, and other services that serve as a stabilizing force for community development.

Our response: While the designation of critical habitat for the northern spotted owl does not, in and of itself, change the land-use allocation for the areas designated (which is ultimately the decision of the entity managing the land, such as the BLM), we agree that in addition to its benefits for the northern spotted owl, conserving mature forests may provide economic benefits to communities through the ecosystem services described by the commenter. Although the final economic analysis (FEA) of the critical habitat designation for the northern spotted owl (IEc 2012) did not quantify these economic benefits, it qualitatively described the ancillary benefits of conservation measures that may be implemented to avoid the destruction or adverse modification of critical habitat. These benefits include public safety benefits, such as timber management practices that reduce the threat of catastrophic wildfire, drought, and insect damage; improved water quality that may reduce water treatment costs and provide human or ecological health benefits; aesthetic benefits of a more natural forest landscape that results in increased recreational use or increases the value of neighboring properties; and carbon storage that may ameliorate the impacts of climate change.

Comment (B): The AOCC, representing the interests of counties in western Oregon, as well as other commenters, submitted comments opposing the withdrawal of the January Exclusions Rule, citing the following rationales:

(i): The AOCC and others commented that the 2012 critical habitat designation negatively impacted the ability of BLM to manage certain former railroad grant lands in Oregon revested to the United States in 1916 (O&C lands) for their statutory purposes under the Oregon and California Revested Lands Sustained Yield Management Act of 1937, Public Law 75–405 (O&C Act) and reduced timber harvest and associated receipts shared with counties. They asserted that the 2012 designation caused BLM to manage these lands under their revised RMPs for the benefit of the northern spotted owl instead.

Our response: The BLM developed its 2016 RMPs considering a variety of authorities and requirements, including the O&C Act, which addresses the management of O&C lands revested to the Federal Government under the Chamberlin-Ferris Act of 1916 (39 Stat. 218) and other authorities. As discussed further in response to *Comment 12,* we acknowledge that there is ongoing litigation regarding BLM's authorities and obligations under the O&C Act and the Endangered Species Act. Once that litigation is finally resolved, BLM will have to determine what, if any, changes to make to its management of the O&C lands under applicable law. Until that time, however, the BLM will, where appropriate, utilize its authorities in furtherance of the purposes of the Endangered Species Act. See also our response to *Comment (6).* See our response to *Comments (21)* and *(22)* for a discussion on the economic impacts of the designation on timber harvest.

(ii): The AOCC commented that the designation of critical habitat on O&C lands is contrary to recent rulings that recognize the statutory requirement that timber on O&C lands is to be ''sold, cut and removed'' according to sustained yield principles and cannot be allocated to reserves, and that section 7 consultation requirements under the Act do not apply to the nondiscretionary obligation of BLM to manage these lands under the principles of sustained yield.

Our response: See our responses to *Comments (6), (12),* and *(25b)* below.

(iii): The AOCC commented that the 2012 critical habitat designation was flawed in that it did not identify or ''actually'' map habitat and that the methods used resulted in vast areas being designated as critical habitat that do not currently have the attributes of northern spotted owl habitat and therefore do not meet the statutory requirements for designation as critical habitat.

Our response: This and similar comments that directly address concerns about our final rule designating critical habitat in 2012 were raised and addressed in the rulemaking for the 2012 rule, and we refer to our responses to such issues in that rulemaking, *see e.g., Public Comments on the Modeling Process* at 77 FR 71876, December 4, 2012; p. 72020. We address here only those comments relevant to the revisions proposed in July 20, 2021.

(iv): The AOCC commented that the designation of critical habitat in 2012 created preserves that prevent sustained yield management and that actively managing critical habitat to support species recovery is not the equivalent of sustained yield management under the O&C Act, further citing the court ruling in *Headwaters, Inc.* v. *BLM, Medford Dist.,* 914 F.2d 1174 (9th Cir. 1990) holding that withdrawing lands from sustained yield timber production for the benefit of wildlife is not a use recognized in the O&C Act and is inconsistent with sustained yield management. On this basis, the commenter seeks additional exclusions from the designated critical habitat.

Our response: Critical habitat designations do not establish specific land-management standards or prescriptions, nor do designations affect land ownership or establish a refuge, wilderness, reserve, preserve, sanctuary, or any other conservation area where no active land management occurs. See our

responses to *Comments (6), (12),* and *(25b)* below.

(v): The AOCC commented that ''creative sustained yield management'' can contribute substantially to the habitat needs of the northern spotted owl without the limitations imposed by a critical habitat designation and that sustained yield management to meet both the subspecies' needs and the O&C Act requirements has not been considered in BLM and U.S. Department of Agriculture, Forest Service (USFS) management plans, northern spotted owl recovery plans, and critical habitat designations. They provided examples of sustained yield strategies that could be considered should the BLM be required to revise their RMPs due to a pending court ruling and suggested that removing critical habitat is a necessary first step.

Our response: As indicated by the comment, complying with and achieving the goals of the O&C Act and the Endangered Species Act can be an extraordinarily complicated task in the forest management arena. The BLM and USFS are responsible for managing O& C lands, and they do so by adopting land management plans that provide guidance and direction for subsequent management actions on those lands. Recovery plans under the Endangered Species Act provide recommendations for management actions that meet the recovery needs of listed species; they are not intended to guide compliance with other statutory requirements. Critical habitat designations, similarly, are focused on the needs of the species but take economic and other impacts into consideration.

The Service expressly considered the role of the O&C lands when revising critical habitat in 2012, but did not consider excluding them at that time because we concluded they were essential to the conservation of the subspecies (77 FR 71876, December 4, 2012; p. 72007).

We expressly consider in this rule excluding the O&C lands (outside of the BLM's Harvest Land Base lands) from the designation based on requests from the commenter and others, but for the reasons discussed in our weighing analysis, have determined not to do so (see Consideration of Impacts Under Section 4(b)(2) of the Act).

We note, however, that the BLM and USFS have proposed harvests from O&C lands within designated critical habitat, consulting with the Service on those actions. To date, we have reviewed such proposals on thousands of acres and have not found that the proposals result in the destruction or adverse modification of that habitat under the Act.

The critical habitat designation benefits the northern spotted owl as a landscape-scale conservation strategy that identifies areas on the landscape that may require special management considerations or protection. In addition, the designation informs management practices that contribute to the recovery needs of the subspecies. In both the critical habitat designation, and in site-specific consultations, the Service has supported active forest management, where appropriate, to provide for some timber harvest while also conserving habitat for the northern spotted owl and reducing the risk of wildfire.

(vi): The AOCC commented that all O&C lands should be excluded from the critical habitat designation because the benefits of exclusion outweigh the costs and that there is no benefit to including these lands in the designation because the O&C Act ''mandates for sustained yield production control over the ESA section 7(a)(2) consultation.'' Additionally, they commented that the designation has had significant adverse economic impacts on the counties, affecting their ability to provide public services and has resulted in mill closures and job losses.

Our response: As described elsewhere in this document, some timber harvest does occur within critical habitat, and total annual timber harvest levels on Federal lands in the range of the northern spotted owl have actually increased since the revision of critical habitat in 2012; see our response to *Comments (21b* and *25a).* See also our responses to *Comments (6* and *25)* concerning O&C lands and our weighing of the benefits of including O&C lands in the critical habitat designation versus excluding them in Consideration of Impacts Under Section 4(b)(2) of the Act.

(vii): The AOCC commented that the economic impact of the critical habitat designation has not been properly evaluated by the Service and that these impacts are not solely attributable to the listing decision.

Our response: See our response to *Comment (20)* below concerning our review of the FEA (IEc 2012) and our regulation on how economic analyses are conducted.

Comment (C): The AFRC submitted comments in support of the January Exclusions Rule and expressed support for the Service's proposal to exclude the BLM's Harvest Land Base lands and lands transferred in trust to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI) and the Cow Creek Band of Umpqua Tribe of Indians (CCBUTI). The AFRC resubmitted comments they previously provided on our 2007, 2008, and 2012 critical habitat rules. We previously responded to those comments in our final respective critical habitat rules; see 73 FR 47326, August 13, 2008, and 77 FR 71876, December 4, 2012. The AFRC's comments on our August 11, 2020, proposed rule (85 FR 48487), our March 1, 2021, rule delaying the effective date of the January Exclusions Rule (86 FR 11892), and our July 20, 2021, proposed rule (86 FR 38246) are summarized below. Comments submitted by AFRC that were similar to comments received on the August 11, 2020, proposed rule have been incorporated into the comment sections following this section. Several counties incorporated AFRC's comments by reference. In some instances, other commenters submitted comments similar to the comments submitted by AFRC; we include those comments in the following summarized comments.

(i): The AFRC commented that the August 11, 2020, proposed revised critical habitat rule gave notice to the public that additional areas may be excluded in the final rule and that the Service (and Secretary) preserved broad discretion to make additional exclusions such that there was no ''logical outgrowth'' problem in the change from the proposed to final exclusions in the January Exclusions Rule.

Our response: We requested comments in our August 11, 2020, proposed rule on the following: Additional areas, including Federal lands and specifically National Forest System lands, that should be considered for exclusion under section 4(b)(2) of the Act and any probable economic, national security, or other relevant impacts of excluding those areas. We also requested comments on any significant new information or analysis concerning economic impacts that we should consider in the balancing of the benefits of inclusion versus the benefits of exclusion in the final determination.

While our request indicated that we might consider additional exclusions, the scale of the final exclusions was much larger and broader than what the public could reasonably anticipate. In our proposed rule, we identified 204,653 acres (82,675 hectares) across 15 counties and 26 critical habitat subunits in Oregon for potential exclusion; the January Exclusions Rule increased the acres excluded by nearly 17-fold. The final rule included extensive areas that were not mentioned in the proposed rule, and for which no

details were provided in the January Exclusions Rule, within the States of Washington and California, 45 counties across the range, and 55 critical habitat subunits across the designation.

In response to our March 1, 2021, rule delaying the effective date of the January Exclusions Rule, we received many comments that the January Exclusions Rule was not a logical outgrowth of the August 11, 2020, proposed rule, including comments from natural resource agencies in Washington and California opposing the exclusions and expressing that they were not aware that exclusions were being considered in their respective States. Additionally, the Washington Department of Fish and Wildlife comments expressed surprise at the 765,175 acres (309,655 hectares) excluded in their State under the January Exclusions Rule. Further, the California Department of Fish and Wildlife commented in response to the March 1, 2021, rule that the January Exclusions Rule did not identify lands excluded in their State with enough specificity to provide a meaningful analysis and comment. Conservation groups and other members of the public commented in response to the March 1, 2021, rule that they were not given the opportunity to present arguments and facts contrary to the vast increase in exclusions as presented in the January Exclusions Rule.

Additionally, the January Exclusions Rule also included new rationales for the exclusions that were not identified in the August 11, 2020, proposed revised critical habitat rule (85 FR 48487). These included generalized assumptions about the economic impact of both the listing of the northern spotted owl and the subsequent designation of areas as critical habitat; the stability of local economies and protection of the local custom and culture of counties; the presumption that exclusions would increase timber harvest and result in longer cycles between harvest; that timber harvest designs resulting from the exclusions would benefit the northern spotted owl, and that the increased harvest would reduce the risk of wildfire; and that northern spotted owls may use areas that have been harvested if some forest structure was retained. The public did not have an opportunity to review or comment on these new rationales.

Further, the January Exclusions Rule failed to reconcile a change in our prior findings regarding areas managed under the O&C Act. In our 2012 rule revising the critical habitat designation for the owl, we found that areas managed under the O&C Act were essential to the conservation of the subspecies and that not including some of these lands in the critical habitat network resulted in a significant increase in the risk of extinction. Commenters stated that the exclusion of these lands in the January Exclusions Rule also conflicted with our December 15, 2020, finding that the northern spotted owl warrants reclassification to endangered status given the exacerbation of the threats it faces. We maintain that the public should have had an opportunity to comment on the expanded critical habitat exclusions made in January in light of the information included in the December 15, 2020, finding and supporting species report (85 FR 81144, FWS 2020, p. 83), which were published just 3 weeks before the January Exclusions Rule.

In summary, it is clear from the public comment record that not being afforded an opportunity to review and provide comment on the much larger and broader areas excluded and the rationale for those exclusions, particularly in light of the December 15, 2020, finding that the northern spotted owl warranted reclassification to endangered status, was considered by the public a lack of transparency and inability to participate in the public process as required under the Administrative Procedure Act. While our proposed August 11, 2020, rule and exclusions did signal the potential that the final rule could be different, on reconsideration we find that it is more prudent and transparent to conclude that an updated proposed rule and an additional opportunity to comment would be warranted were we to seek to put the January Exclusions Rule into effect.

(ii): The AFRC commented that the Service's modeling of extinction risk in the 2012 critical habitat designation discounted millions of acres of potentially suitable habitat in national parks and designated wilderness that are not included in the designation and assert that our section 4(b)(2) analysis is flawed because the benefits these areas provide was not considered. The AFRC further commented that our assertion that these areas are relatively small and widely dispersed across the range of the northern spotted owl is inaccurate as these lands cover over 7 million acres (2.8 million hectares).

Our response: We included Congressionally Reserved Lands (*e.g.,* designated wilderness and national parks) in our modeling analyses of the critical habitat network and extinction risk based on the assumption that habitat quality in these areas would be retained whether they were designated as critical habitat or not (Dunk *et al.* 2012, pp. 19, 57). Our section 4(b)(2) analysis in the 2012 critical habitat rule considered the benefits of including these lands within the critical habitat designation and found that these areas are essential to the conservation of the northern spotted owl. However, unlike other Federal and State lands that have multiple use mandates that include commercial harvest of timber in the range of the spotted owl, such as National Forests, State Forests, and public-domain forests managed by the BLM, these reserved natural areas are unlikely to have uses that are incompatible with the purposes of critical habitat because the primary habitat threat to spotted owl critical habitat—commercial timber harvest—is generally prohibited on these lands. These natural areas are managed under explicit Federal laws and policies consistent with the conservation of the northern spotted owl, and there is generally little or no timber management beyond the removal of hazard trees or fuels management to protect structures, roads, human safety, and important natural attributes.

Accordingly, we found that a critical habitat designation of these reserved areas in the range of the spotted owl would provide no additional regulatory benefits beyond what is already on these lands due to their permanent status as protected lands and, importantly, the fact that commercial timber harvest is generally not permitted on these lands under Federal and State law and policy. Further, we found that the designation of these reserve areas would confer little additional educational benefits associated with the conservation of the spotted owl, as these educational messages are already being communicated in many of these areas under existing programs. In sum, although national parks and designated wilderness were excluded under section 4(b)(2) of the Act from the 2012 critical habitat designation, the conservation value of these lands was considered in our analysis and modeling of which lands were essential to the conservation of the northern spotted owl and in the design of a critical habitat network.

Regarding the size and distribution of national parks and designated wilderness, we initially identified and proposed to include approximately 2.6 million acres (1 million hectares) of these lands in the 2012 proposed critical habitat revision because they contained northern spotted owl habitat and were found to be essential to the conservation of the subspecies. These 2.6 million acres (1 million hectares), which we identified as habitat essential to the conservation of the northern spotted

owl, are the areas we describe as relatively small and widely dispersed, versus the entire 7 million acres (2.8 million hectares) as asserted by the AFRC. However, as we noted at the time of listing the northern spotted owl in 1990, many of these areas are also typically high-elevation lands and it is unlikely that the owl populations would be viable if their habitat were restricted to these areas alone (55 FR 26114, June 26, 1990; p. 26177). Additionally, as we stated in our July 20, 2021, proposed revision, some of these areas are widely dispersed and cannot be relied on to sustain the subspecies unless they are part of and connected to a wider reserve network as provided by the 2012 critical habitat designation (77 FR 71876, December 4, 2012).

(iii): The AFRC commented that we stated that the barred owl is not the primary threat to northern spotted owls and that this is contradicted by the best available science. The AFRC and several counties stated that there is little to no benefit of including areas occupied by barred owls because the two species cannot coexist and the presence of barred owls makes these areas unsuitable for northern spotted owls. The AFRC commented that our conclusion that habitat availability is as important as managing the threat of barred owls is inaccurate.

Our response: In our July 20, 2021, proposed rule, we stated that the large additional exclusions made in the January Exclusions Rule were premised on inaccurate assumptions about the status of the owl and its habitat needs particularly in relation to barred owls. The large additional exclusions were based in part on an assumption that barred owl control is the fundamental driver of northern spotted owl recovery, when in fact the best scientific data indicate that protecting late-successional habitat also remains critical for the conservation of the spotted owl (FWS 2020, p. 83). We did not intend this statement to be read to mean that the barred owl is not the primary threat to northern spotted owls. We meant that recovery of the northern spotted owl will require management of the barred owl as well as continued habitat protections. See our response to *Comment (13)* below for a discussion on the threat of barred owls to northern spotted owls and the importance of maintaining habitat in light of competition with barred owls. Although the northern spotted owl does not coexist well with the invasive barred owl and the two species have a high degree of overlap in their habitat preferences (Wiens *et al.* 2021, p. 2), their presence does not alter the suitability of the habitat to support northern spotted owls. In fact, the availability of suitable forest conditions and addressing habitat loss is needed to work in concert with barred owl management to reduce population declines of northern spotted owls (Wiens *et al.* 2021, pp. 1, 2).

(iv): The AFRC commented that the Service's rationale for withdrawing the January Exclusions Rule based on the need for biological redundancy is flawed because critical habitat exacerbates the wildfire threat to the northern spotted owl and communities by inhibiting active forest management (other commenters, including several counties, reiterated this assertion that critical habitat conflicts with active management aimed at reducing wildfire risk). Specifically, the AFRC states that forest treatments that remove canopy cover to such an extent that habitat is ''downgraded'' (*e.g.,* habitat that supports nesting, roosting, and foraging is removed and the area can only support dispersal) are avoided or deferred due to regulatory constraints such as section 7 consultation requirements on critical habitat for projects that would reduce the risk of wildfire in dry forest ecosystems. The AFRC provided examples of projects that they assert were altered due to the critical habitat designation or litigated and delayed due to issues related to critical habitat.

Our response: See our response to *Comment (27a)* regarding perceived conflicts between the critical habitat designation and active forest management to address risk of wildfire in the dry forest ecosystem. See also our response to *Comment (9)* regarding the need for biological redundancy within the critical habitat designation. In regard to the specific prescriptions for forest management treatments in dry forest ecosystems within critical habitat, in the section on Special Management Considerations or Protection, the 2012 critical habitat rule referred to the guidance discussed in the Revised Recovery Plan for the Northern Spotted Owl (Recovery Plan) (FWS 2011, pp. III–11 to III–39). The Recovery Plan recommended active forest management with the goal of maintaining or restoring forest ecosystem structure, composition, and processes that would be sustainable and provide resiliency under current and future climate conditions. The Recovery Plan acknowledged that short-term impacts to northern spotted owls and their habitat may occur due to these actions, but they may be beneficial in the long-term if they reduce future losses from disturbance events, such as wildfire, and improve resiliency to climate change (FWS 2011, p. III–14). Further, the Revised Recovery Plan for the Northern Spotted Owl states that ''tradeoffs that affect spotted owl recovery will need to be assessed on the ground, on a case-by-case basis with careful consideration given to the specific geographical and temporal context of a proposed action'' and that specific prescriptions to meet the goals of the recovery plan vary across forest types and the landscape (FWS 2011, p. III–14). Section 7 consultations conducted on forest management actions within critical habitat provide the avenue for these assessments and are one of the benefits of designating these areas.

In response to projects being altered due to the 2012 critical habitat designation, the examples that AFRC provided were for projects that were consulted on prior to the critical habitat designation but had not yet been implemented when the designation was finalized. Project modifications and additional time to address the effects to the physical and biological features of critical habitat and to consider the special management recommendations and protections discussed in the recently published critical habitat designation is a reasonable expectation for such projects. In response to projects being avoided or deferred within critical habitat, contrary to AFRC's assertion, projects to reduce the risk of wildfire continue to be consulted on with positive outcomes for the subspecies and the ecosystem while allowing for timber harvest that meets Federal agency timber production purposes; see our response to *Comment (27a)* for a discussion of recent consultations. The decision on whether to propose an action that will need to undergo section 7 consultation, however, is under the purview of the Federal land management agencies. As we noted in the 2012 critical habitat rule, specifically prescribing such management is beyond the scope or purpose of the critical habitat designation, but should instead be developed by the appropriate land management agency at the appropriate land management scale (*e.g.,* National Forest or BLM District) (USDA 2010, entire; Fontaine and Kennedy 2012, p. 1559; Gustafsson *et al.* 2012, pp. 639–641, Davis *et al.* 2012, entire) through the land managing agencies' planning processes and with technical assistance from the Service, as appropriate (77 FR 71876, December 4, 2012; p. 71882).

In response to the comment that litigation associated with critical habitat designations demonstrates that the designation conflicts with forest

management, we note that historically Federal forest management projects are frequently the subject of litigation regardless of whether they occur within critical habitat or not. Litigation on these projects does not necessarily indicate that critical habitat conflicts with forest management. There are myriad reasons and issues that parties seek to litigate Federal forest management actions; because they do so is not a basis to conclude that the critical habitat designation is flawed.

(v): The AFRC commented that northern spotted owl critical habitat restricts timber harvest, citing the USFS' recent Bioregional Assessment (USFS 2020), which states that timber production and restoration often conflict with habitat protection objectives and provides an example of reduced timber harvest on USFS matrix lands due to critical habitat designation. AFRC further commented that critical habitat has the effect of altering management direction on USFS matrix lands based on the USFS recommendation in the Bioregional Assessment to align their reserve allocations with the 2012 critical habitat designation. AFRC asserts that a conflict in management of USFS forest lands exists such that managing hazardous fuel loads that improve forest health and resilience to wildfire conflicts with maintaining vegetative cover that is needed for northern spotted owls.

Our response: The USFS Bioregional Assessment (Assessment) (USFS 2020) is one of the initial steps the USFS has taken to address management plans that need to be updated. Most of the land management plans in the area analyzed under the Assessment were written about 30 years ago and need to be updated to reflect current science and social, economic, and ecological challenges across this area (USFS 2020, p. 10). The Assessment focuses on the most compelling issues across the landscape that need updating, including species' habitat needs and the need to address climate change, severe wildfire risk, and forest health. The Assessment indicates that timber harvest is no longer emphasized on USFS matrix lands that were designated as critical habitat and expresses the need to align their reserve allocations with the 2012 critical habitat designation (USFS 2020, pp. 60, 63). However, the Assessment further states that ''better realignment of the late-successional reserve network with critical habitat could adjust the matrix lands available for ecological treatments, which might provide additional timber outputs'' (USFS 2020, p. 74). Additionally, the Assessment states that ''[b]etter alignment is needed between designated critical habitat for spotted owls and the late-successional old-growth portion of the late-successional reserve network; this could help simplify management direction and better protect high-quality habitat for owls and other old growth-dependent species, such as marbled murrelet. In addition to protecting these habitats, management direction that allows active management to restore and improve ecosystem resilience could help conserve and develop northern spotted owl habitat in the long term'' (USFS 2020, p. 63).

The Assessment expresses an urgent need to update their land management plans to modify desired conditions associated with dry forest ecosystems and to allow for active management in fire-prone areas to restore ecological integrity and habitat (USFS 2020, pp. 63, 71, 76); active management to address these needs aligns with both the Recovery Plan for the Northern Spotted Owl and the 2012 critical habitat designation. Finally, the Assessment recognizes that ''social values related to land management have begun to shift toward recognition of the broad benefits associated with our natural resources and the importance of balancing resource protection with timber production'' (USFS 2020, p. 62).

We acknowledge that the designation of critical habitat on USFS matrix lands can inform where timber harvest is emphasized as the USFS considers the special management considerations and protections discussed in the 2012 critical habitat designation. Education and providing information are important functions of critical habitat designations, especially when designing and implementing forest management projects on public lands. However, the Service continues to advocate for active management of forests to reduce wildfire risks as described in our 2012 critical habitat rule and the Recovery Plan. We designated USFS matrix lands as critical habitat where they contain habitat that is essential to the subspecies' conservation (77 FR 71876, December 4, 2012; p. 71895).

See our response to *Comment (27a)* regarding perceived conflicts between the critical habitat designation and active forest management to address the risk of wildfire in the dry forest ecosystem.

(vi): The AFRC commented that our July 20, 2021, proposed revised critical habitat rule fails to consider the contribution that management plans have in addressing connectivity across the landscape and the current level of connectivity provided by management since the NWFP was adopted. The AFRC stated that the Service acknowledged in the Recovery Plan that the NWFP provides direction to address connectivity and that both the reserve and matrix land-use allocations would contribute to connectivity. AFRC further stated that the USFS maintains dispersal habitat across their land-use allocations, that dispersal is not a limiting factor, and that there is far more dispersal habitat than is needed.

Our response: See our response to *Comment (9)* regarding the need for biological redundancy within the critical habitat designation and our responses to *Comments (25c–e)* regarding our consideration of management plans. We evaluate effects of Federal actions on northern spotted owl dispersal habitat during the section 7 consultation process at a larger scale than effects of the action to nesting, roosting, and foraging habitat. This approach is to ensure that dispersal habitat is providing for connectivity across the landscape between large blocks of nesting, roosting, and foraging habitat that reproducing northern spotted owls prefer when available in an area. The amount of dispersal habitat varies across the designation and is limited in some geographic areas such as between the Coast Range and Cascade Range in southern Oregon (FWS 2020, pp. 28–32). The biological redundancy included in the design of the critical habitat network allows for some timber harvest and was included to address the unpredictability of the extent of natural disturbances such as wildfire.

(vii): The AFRC commented that ''mere connectivity is not an element of habitat or critical habitat, and effects only on connectivity cannot constitute 'adverse modification' in violation of the ESA,'' citing *Defs. of Wildlife* v. *Zinke,* 856 F.3d 1248, 1262 (9th Cir. 2017) and that areas that provide only connectivity, therefore, cannot be designated as critical habitat.

Our response: We do not agree with the commenter's interpretation of the cited case, which involved effects of a proposed Federal action to the desert tortoise. There, the project effects challenged were not to designated critical habitat, but rather to habitat that provided connectivity between designated critical habitat units. The Service concluded that although the project affected connectivity habitat for the tortoise, those effects did not adversely modify critical habitat. Plaintiffs asserted that the Service was obligated to evaluate the effect of that connectivity loss as an ''adverse modification'' to critical habitat. The Service appropriately considered the effects of the potential loss of

connectivity in examining whether the Federal action jeopardized the species, but reasonably concluded that alterations to habitat that is not designated as critical habitat did not ''adversely modify'' that critical habitat.

The court simply affirmed this rational approach; the court's decision does not stand for the proposition that designated critical habitat cannot include the characteristics of connectivity. To the contrary, the court recognized the well-established scientific principles of connectivity (''[c]onnectivity is the ''degree to which population growth and vital rates are affected by dispersal'' and ''the flow of genetic material between two populations.''). Connectivity promotes stability in a species by ''providing an immigrant subsidy that compensates for low survival or birth rates of residents'' and ''increasing colonization of unoccupied'' habitat,'' *Defs. of Wildlife* v. *Zinke* at 1254. This case is distinguishable from the circumstances of the northern spotted owl in that the Service has expressly designated ''connectivity'' habitat as critical habitat, *i.e.,* the dispersal habitat.

For the northern spotted owl, a project that proposes significant impacts to designated critical dispersal habitat that impedes connectivity between large blocks of designated critical habitat used for nesting, roosting, or foraging could result in a conclusion that the action would destroy or adversely modify critical habitat. Although habitat that allows for dispersal may currently be marginal with insufficient characteristics to support nesting, roosting, or foraging, it provides an important linkage function among blocks of higher-quality habitat both locally and over the northern spotted owl's range that is essential to its conservation. Juvenile dispersal is a highly vulnerable life stage for northern spotted owls and enhancing the survivorship of juveniles during this period could play an important role in maintaining stable populations of northern spotted owls.

Dispersal habitat is habitat that both juvenile and adult northern spotted owls use when looking to establish a new territory. Both dispersing subadults and nonterritorial birds (often referred to as ''floaters'') are present on the landscape and require suitable habitat to support dispersal and survival until they recruit into the breeding population; this habitat requirement is in addition to that already used by resident territorial owls. Successful dispersal of northern spotted owls is essential to maintaining genetic and demographic connections among populations across the range of the subspecies and population growth can occur only if there is adequate habitat in an appropriate configuration to allow for the dispersal of owls across the landscape; therefore, the Service included dispersal habitat as part of the critical habitat designated for the northern spotted owl.

(viii): Comments submitted by AFRC (and incorporated by others) include assertions that the Service included within the 2012 critical habitat designation areas that are not ''habitat'' for the northern spotted owl, in contravention of the Supreme Court's subsequent ruling in 2018 that critical habitat designated under the Act must be habitat for the species in the first instance (*Weyerhaeuser Co.* v. *U.S. Fish and Wildlife Serv.,* 139 S. Ct. 361, 368 (2018) (''*Weyerhaeuser*''). These commenters assert that areas that are not ''habitat'' for the owl within the critical habitat designation should be excluded by the Secretary under section 4(b)(2).

Our response: As we explain in more detail in the *Background* section below, we reviewed our 2012 critical habitat rule for consistency with our new regulation defining ''habitat'' following the *Weyerhaeuser* decision, and demonstrate why all of the designated critical habitat is habitat for the northern spotted owl. We also respond to comments seeking a wide variety of exclusions based on general assertions that areas are not ''habitat'' for the northern spotted owl presently, explaining why the assumptions underlying these assertions are incorrect as matter of fact or law; see responses to *Comments (26–28).*

Comment (D): The AFRC and several counties commented on several other issues pertaining to our March 1, 2021, delay rule; April 30, 2021, delay rule; and proposed withdrawal of the January Exclusions Rule as summarized below:

(i): Commenters stated that the Service predetermined to issue a further delay rule prior to publishing the March 1, 2021, delay rule.

Our response: As described in the March 1, 2021, delay rule, the Service was concerned about the potential effects of the January 2021 exclusions to impede conservation of the northern spotted owl, and sought comments on the issues of fact, law, and policy regarding the January Exclusions Rule. We noted that an additional delay of the effective date might be warranted and expressly sought comment. As the first delay rule would expire by April 30, and it can take some time to develop and obtain publication of rules in the **Federal Register**, it was appropriate for the Service to prepare a draft of such a second rule while the first was being published. That the Service took steps to do so is not a ''predetermination.'' Agencies frequently prepare drafts of rules and change them based on internal and public comments. Any decision to move forward with a second delay rule is not final until authorized by the Service and published in the **Federal Register**.

(ii): Commenters stated that the delay rule is unlawful and contrary to the Administrative Procedure Act and failed to effect a valid amendment of the January Exclusions Rule, which was due to go into effect on March 16, 2021. Commenters stated that the Service's issuance of the March 1, 2021, delay rule without providing an opportunity for public notice and comment was in violation of the Administrative Procedure Act. Commenters further stated that the April 30, 2021, rule delaying the effective date of the January Exclusions Rule until December 15, 2021, was issued after the first delay rule expired and the January Exclusions Rule had gone into effect.

Our response: As the commenter noted, issues concerning the lawfulness of the delay rule are the subject of litigation brought against the Service on these topics in which they are plaintiffs, see *American Forest Resource Council* v. *Williams,* No. 1:21–cv–00601–RJL (D.D.C). The Service has responded to these assertions in briefs before the court. In summary, the Service's decision to delay the implementation of the January Exclusions Rule and ultimately to allow for this additional rulemaking to withdraw it, was consistent with all applicable laws. For further details, please see our responsive briefs in that litigation, available in our record for this rulemaking.

(iii): Commenters stated that we cannot withdraw a rule that has been published; it must instead be repealed, rescinded, or amended. Based on this rationale, commenters stated that we must redesignate in a new rulemaking the acres that were excluded in the January Exclusions Rule if we are to retain them in the critical habitat designation and that we must complete a new economic analysis for those redesignated lands.

Our response: Whether or not the Service uses the term ''withdraw, repeal, or rescind'' does not alter the result of this final rule—the exclusions finalized (but not in effect) in the January rule are ''withdrawn, repealed, or rescinded'' by this final rule. Because this final rule to take this action was developed with notice and comment rulemaking, ''repeal'' would be

consistent with the language used in the Administrative Procedure Act for the notice and comment rulemaking here. However, as the January Exclusions Rule was final, but never went into effect, ''withdraw'' is similar to situations in which a rule is developed but never went into effect as cited by the commenters. In any event, as the January Exclusions Rule never went into effect, the Service was not obligated to ''redesignate'' the critical habitat areas already designated and unchanged since the 2012 critical habitat rule.

(iv): Commenters stated that withdrawing the January Exclusions Rule violates the terms and intent of the settlement agreement in *Carpenters Industrial Council et al.* v. *Bernhardt et al.,* No. 13–361–RJL (D.D.C.) (retitled *Pacific Northwest Regional Council of Carpenters et al.* v. *Bernhardt et al.* with the substitution of named parties before being dismissed).

Our response: The commenter does not dispute that the Service completed the production of a proposed and final rule per the timeline in the settlement agreement, as extended. Rather, the commenter asserts that because of the alleged flaws in the delay rules, the withdrawal of the January Exclusions Rule violates the settlement agreement terms and intent. The Service addresses the assertions regarding the delay rules above. As to the ''intent'' of the settlement agreement, the Service is here finalizing a revision to the 2012 critical habitat rule excluding additional areas under authority of section 4(b)(2). This final rule is not the broad exclusions that the commenters sought, but this does not mean the Service violated either the intent, let alone the terms, of the settlement agreement with the litigating parties. The Service did not (nor could it have) pre-committed in a settlement agreement to ultimately determine a set of exclusions in advance of public notice and comment rulemaking.

Comment (E): Douglas County commented that exclusion of O&C lands would not result in extinction of the northern spotted owl and that exclusion of these areas would result in a stronger partnership with local forest managers.

Our response: See our consideration of the benefits of partnerships and our extinction analysis in Consideration of Impacts Under Section 4(b)(2) of the Act.

Comment (F): Commenters stated that our reevaluation of the exclusions in the January Exclusions Rule is counter to the finding the Secretary made in 1992 that ''overall effects on the Northwest timber industry and to some counties in particular, were potentially severe and that further consideration should be given to excluding additional acreage from the final designation to reduce the overall economic impacts that may result from the designation of critical habitat.''

Our response: Under section 4(b)(2) of the Act, the Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor; this discretion is not limited by previous determinations such as we made in 1992. In this rulemaking, the Secretary has exercised her discretion to exclude certain areas and not others from the critical habitat designation after weighing these benefits.

Comment (G): Conservation groups commented that to the extent the January Exclusions Rule relied on economic impacts, recent research (Ferris and Frank 2021) shows that the economic impacts of the 2012 critical habitat designation have been overstated and are instead consistent with what the Service found at that time.

Our response: Ferris and Frank (2021) discuss the impact that the 1990 listing of the northern spotted owl and subsequent critical habitat designation in 1992 had on employment in the Lumber and Woods Products Sector between 1984 and 2000. The authors found that the impacts to employment in this sector were similar to what the government projected at the time of listing of the northern spotted owl and were not as large as projected in industry studies. Their study, however, did not focus on the incremental impacts of designating critical habitat for the northern spotted owl above those impacts attributed to listing, which is how the Service assesses the economic effect of critical habitat designations.

Comments Specific to Exclusions

Comments From Federal Agencies

Comment (1): The USFS stated that, as critical habitat in southern Oregon and northern California becomes more fire prone, as evidenced by the 2020 fire season, the USFS continues to be concerned for the persistence of the northern spotted owl in the Pacific Northwest. The USFS encouraged connectivity between existing critical habitat units. In particular, the USFS commented that the Service should consider the probability of wildfire events, the effect of climate change, and projected wildfire behavior as tools for determining where critical habitat designations should be revised throughout the range of the northern spotted owl. Additionally, on December 15, 2020, after the comment period closed on our August 11, 2020, proposed rule, we received a comment letter from the Under Secretary, Natural Resources and Environment, Department of Agriculture, supporting Interior's efforts to revise the northern spotted owl critical habitat designation because of difficulties encountered by the USFS in achieving its statutory mission for managing the National Forests. The letter discussed the devastation to the spotted owl habitat and to other property caused by wildfire in general, using the 2020 wildfire season as an example. The letter requested that the USFS and the Service work together in protecting the northern spotted owl and lowering the risks of catastrophic wildfire.

Our response: In response to the comment submitted by the Department of Agriculture, it is important to note that the Service works closely with the USFS and other land managers to both recover the northern spotted owl and lower the risk of catastrophic wildfire. For example, the Service has completed multiple consultations under section 7 with Federal agencies on fuels reduction, stand resiliency, and pine restoration projects in dry forest systems within the range of the northern spotted owl. Those actions have included treatment areas that reduce forest canopy to obtain desired silvicultural outcomes, lower potential wildfire severity, and meet the need for timber production. They also promote ecological restoration and are expected to reduce future losses of spotted owl habitat and improve overall forest ecosystem resilience to climate change. We have concluded in these consultations that the actions do not destroy or adversely modify critical habitat as defined under the Act and our implementing regulations. Thus, in our experience, Federal agencies are able to plan and implement active forest management, including commercial timber harvests, to reduce wildfire risk in northern spotted owl designated critical habitat.

In addition, the Service considered the potential impacts of wildfire in our 2012 critical habitat designation (77 FR 71876, December 4, 2012). The 2012 critical habitat rule represented an increase in the total land area identified

from previous designations in 1992 and 2008. This increase in area was due, in part, to the need to provide for essential biological redundancy in northern spotted owl populations and habitat in fire-prone landscapes (Noss *et al.* 2006, p. 484; Thomas *et al.* 2006, p. 285; Kennedy and Wimberly 2009, p. 565). Please see our response to *Comment (9)* concerning the impact of the 2020 wildfires.

In response to these and similar comments from others asserting that excluding areas from critical habitat would lead to a reduction in wildfire risks, the January Exclusions Rule acknowledged that Federal land managers could conduct active management in areas of designated critical habitat without violating the adverse modification prohibition of section 7 of the Act. The January Exclusions Rule went further, however, and inferred that the exclusion of areas from designated critical habitat would increase the potential for Federal land managers to include more lands in the Harvest Land Base, and allow longer cycles between timber harvests to provide many environmental benefits, including reductions in wildfire risk. It is certainly true that longer cycles between timber harvests, *i.e.,* allowing trees to become older before they are removed, can have environmental benefits for species dependent on mature forests such as the northern spotted owl. However, it is speculative to conclude that Federal land managers would change their approach to allow for longer rotations if lands are excluded from the northern spotted owl critical habitat designation. There also remains scientific uncertainty about the conclusion that harvest of timber always lessens risks for catastrophic wildfire as compared with, for example, a focus on fuel reduction treatments targeted to restore more sustainable ecological processes. While the efficacy of standalone treatments such as thinning is uncertain and site-dependent, there exists widespread agreement that combined effects of thinning plus prescribed burning consistently reduce the potential for severe wildfire across a broad range of forest types and conditions (Prichard *et al.* 2021, Fule *et al.* 2012, Kalies *et al.* 2016, Stephens *et al.* 2021).

In response to the USFS comments concerning spotted owl habitat connectivity, providing connectivity while also supporting other uses of forest lands is consistent with the critical habitat designation. For example, we found in our 2016 Biological Opinion on the revised BLM RMPs that the spatial configuration of ''reserve'' land use allocations identified in the RMPs provide for northern spotted owl connectivity across the landscape. Reserve land-use allocations are areas in which BLM prioritizes management for resources other than commercial timber production, although active management such as harvest may occur in some reserves in order to achieve management objectives. The Harvest Land Base land-use allocation describes areas where BLM prioritizes commercial timber production. The BLM's management of the Late-Successional Reserve for northern spotted owl habitat and other reserves for non-timber objectives, along with the management and scheduling of timber sales within the Harvest Land Base, are expected to provide for northern spotted owl dispersal between physiographic provinces and between and among large blocks of habitat designed to support clusters of reproducing northern spotted owls (FWS 2016, p. 698), while also allowing BLM to meet its timber harvest goals.

Comments From States

Section 4(b)(5)(A)(ii) of the Act requires the Service to give actual notice of any designation of lands that are considered to be critical habitat to the appropriate agency of each State in which the species is believed to occur, and invite each such agency to comment on the proposed regulation. 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.'' We notified the States of Washington, Oregon, and California of the proposed additional exclusions in Oregon. We did not receive comments from any State or State agency on the August 11, 2020, or July 20, 2021, proposed rules, only comments regarding the January Exclusions Rule; see our response to *Comment (Ci).*

Comments From Counties

We received comments from Klickitat, Lewis, and Skamania Counties in Washington; from Douglas, Jackson, and Harney Counties in Oregon; and from Siskiyou County in California. Most comments from counties pertained to either economic analysis or exclusions; see Economic Analysis Comments and Exclusions Comments below for County comments and our responses. Other comments from the counties are addressed in the section above titled Comments on the Withdrawal of the January Exclusions Rule and the section below titled Comments on July 20, 2021, Proposed Rule.

Comments From Tribes

We received comments from the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians; the Cow Creek Band of Umpqua Tribe of Indians; and the Coquille Indian Tribe.

Comment (2): The Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians and the Cow Creek Band of Umpqua Tribe of Indians commented in support of the proposed exclusion of lands recently transferred to them in trust. The Cow Creek Band of Umpqua Tribe of Indians expressed concern, however, that the proposed rule did not consider Tribal management plans and objectives for Indian forest land as a basis for the exclusions. The Coquille Tribe similarly commented in general that the rule should include a statement that recognizes the dominant purpose of the Coquille Forest to generate sustainable revenues sufficient to support the Coquille Tribal government's ability to provide services to Coquille Tribal members, and ensure that the resulting critical habitat designation avoids burdening the Coquille Forest's dominant purpose.

Our response: No Indian lands were designated in the December 4, 2012, critical habitat rule (77 FR 71876). Since 2012, Federal lands managed by the BLM were transferred in trust to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians and the Cow Creek Band of Umpqua Tribe of Indians pursuant to the Western Oregon Tribal Fairness Act (Pub. L. 115–103). This revised rule excludes those recently transferred lands from critical habitat designation. We considered Tribal management plans in our analysis of these exclusions as requested by the commenters; see Consideration of Impacts Under Section 4(b)(2) of the Act.

We have not designated critical habitat within the Coquille Forest. Should we consider revisions to the critical habitat designation in the future, the Service will coordinate with the Coquille Tribe to address effects to the Forest and its dominant use as managed by the Tribe.

Public Comments

Public Comments on Critical Habitat Boundaries

Comment (3): Commenters expressed concern that areas we proposed for exclusion in our August 11, 2020, proposed rule and our July 20, 2021, proposed rule provide important connectivity between the Coast Range, Cascades, and Klamath/Siskiyou Mountains populations of northern

spotted owls, and that exclusion could reduce colonization and gene flow, cause further isolation, and increase the probability of extinction of the owl. Commenters further stated that we should not rely on outdated plans that assume that northern spotted owls can successfully disperse in low-quality habitat, and that the distribution of reserves on National Forests alone will not meet the subspecies' need for well-connected habitat.

Our response: The BLM updated their RMPs in 2016; we found in our 2016 Biological Opinion on the revised BLM RMPs that the spatial configuration of reserves, the management of those reserves for the retention, promotion, and development of northern spotted owl habitat, and the management and scheduling of timber sales within the Harvest Land Base land use allocation are all expected to provide adequate opportunities for northern spotted owl dispersal between physiographic provinces and between and among large blocks of habitat designed to support clusters of reproducing northern spotted owls (FWS 2016, p. 698). Thus, by excluding areas within the Harvest Land Base, we are not diminishing or altering connectivity functions of the remaining designated critical habitat to any significant degree. Additionally, regarding the reliance on reserves alone to facilitate connectivity, this revised designation retains USFS matrix lands that are essential to the conservation of the subspecies in addition to reserve lands. Please see our response to *Comment (9)* concerning the impact of the 2020 wildfires and *Comment (26b)* concerning the quality of dispersal habitat.

In response to this comment, the January Exclusions Rule concluded that connectivity would remain protected without the critical habitat designation because Federal actions that ''may affect'' northern spotted owls would still require consultation under section 7 of the Act to evaluate whether the action jeopardizes the continued existence of the subspecies. On further review, we conclude that assumption was overstated as a basis to exclude these lands. It is true that Federal actions that ''may affect'' northern spotted owls, including actions that impact northern spotted owl habitat even if not designated as ''critical,'' would still undergo section 7 consultation (whether informal or formal, depending on the effects, see our response to *Comment 7,* below). The critical habitat designation, however, benefits the northern spotted owl as a landscape-scale conservation network that connects large blocks of habitat that are able to support multiple clusters of northern spotted owls. The designation identifies areas on the landscape that may require special management considerations or protection.

The section 7 consultation on effects to critical habitat ensures these considerations occur and evaluates the post-project functionality of the network to provide for connectivity at the subunit, unit, and designation scales. Evaluating habitat at multiple scales in a consultation on critical habitat ensures the landscape continues to support the habitat network locally, regionally, and across the designation.

These considerations are not necessarily involved to the same degree when considering the effects to northern spotted owl habitat that is not designated as critical as part of the jeopardy analysis in a section 7 consultation. A consultation on effects to the species (including effects resulting from changes to the non-designated habitat of the species) as part of the ''jeopardy'' prong looks primarily at how the project affects individuals, populations, and the species rangewide. Consultation on the effects to the designated critical habitat (the ''critical habitat'' prong of the consultation) focuses on that habitat network. This reflects Congress's clear articulation of two limits on Federal actions in section 7: A prohibition against jeopardizing the species, and a prohibition against destroying or adversely modifying its designated critical habitat. While we do evaluate the effects of landscape level impacts to habitat as part of the jeopardy analysis, this does not mean that the analysis of impacts to critical habitat are no longer necessary; the two analyses are not necessarily interchangeable.

Additionally, many of the lands that were excluded in the January Exclusions Rule are reserves or matrix lands that provide habitat that we found in our 2012 critical habitat rule were essential to the conservation of the northern spotted owl (77 FR 71876; p. 71895). See our reconsideration of the weighing of the benefits of inclusion versus the benefits of excluding these lands and our extinction analysis in Consideration of Impacts Under Section 4(b)(2) of the Act. The Harvest Land Base lands that we exclude here in this final rule represent only a small portion (less than 2 percent) of the critical habitat designation and represent only 7 percent of the land base managed by the BLM under the 2016 RMPs, with the remaining lands largely managed as reserves. We evaluated the effects of future harvest on the Harvest Land Base lands in our 2016 biological opinion on the BLM's revised RMPs (BLM 2016a, b) and found that recovery of the northern spotted owl would not be impeded and that the critical habitat units would continue to provide connectivity and sufficient habitat across the landscape (FWS 2016). Therefore, additional section 7 consultation on critical habitat within the Harvest Land Base as currently described in the 2016 RMPs would provide no incremental conservation benefit as the management direction under the RMPs already provides a conservation strategy consistent with recovery of the northern spotted owl and will not appreciably diminish the conservation value of the critical habitat designation.

The January Exclusions Rule, in response to this comment, also stated that ''some of the areas used by the northern spotted owl for migration are secondary growth forests'' and that ''excluding such areas from critical habitat will not change their characteristics as secondary growth forests'' and they will continue to be used for ''migratory purposes.'' On further review we find it is accurate that northern spotted owls may use areas of secondary growth forest; however, their use of these areas is dependent on the age, diversity, and condition of those forests. See also our response to *Comment (26)* below. An increase in the areas available for timber harvest, which was identified as a benefit of excluding the 3.4 million acres (1.4 million hectares) in the January Exclusions Rule, could occur if these lands were excluded from the critical habitat designation and land management agencies were no longer required to consider the special management considerations of critical habitat and subsequently amended their management approach or land management plans to allow for more harvest. The resulting increase in timber harvest could significantly alter the ability of these stands to provide for dispersal. While these changes in management and any resulting projects would not be immediate if these areas were excluded from the designation, over time expanded timber harvest would reduce connectivity of these areas to older, more complex forests that provide nesting, roosting, and foraging habitat for populations of northern spotted owls. Conserving or enhancing connectivity between populations to facilitate dispersal and subsequent colonization of large blocks of habitat that can support clusters of reproducing northern spotted owls was a key feature in the design of the critical habitat network.

Additionally, the January Exclusions Rule assumed that the reduced regulatory burden in the process of Federal planning and implementation of timber management would result in increased harvest. Increased harvest at the scale of exclusions in the January Exclusions Rule would reduce the overall connectivity and suitability of the critical habitat network. That reduction in connectivity under the January Exclusions Rule was, in hindsight, quite significant because of the expansive elimination of critical habitat designated in areas of the northern spotted owl range, with some critical habitat subunits being reduced by up to 90 percent. The much smaller exclusions we finalize here eliminate only portions of critical habitat units that overlap with the Harvest Land Base allocation, which, as we already determined in our 2016 biological opinion, could be harvested without affecting the conservation value, including connectivity, of that designated critical habitat. See also our response to *Comment (9)* concerning the impact of the 2020 wildfires.

Comment (4): Commenters noted that the lands proposed for exclusion in our August 11, 2020, proposed rule and July 20, 2021 proposed rule, in particular Federal lands, met the definition of critical habitat for the northern spotted owl and were determined to be essential in our 2012 critical habitat designation (77 FR 71876), and so questioned how those lands could now be appropriate for exclusion from designation. Additionally, commenters questioned how the exclusion of these lands will not result in extinction.

Our response: Areas that are found essential to the conservation of the species may be considered for exclusion from a critical habitat designation under section 4(b)(2) of the Act. 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.

We found the areas we designated in 2012 to be essential to the conservation of the northern spotted owl. However, the BLM revised their RMPs in 2016, amending their conservation strategy for the northern spotted owl and related land use allocations (BLM 2016a, 2016b). We found in our 2016 Biological Opinion on the BLM RMPs (FWS 2016, p. 700) that, even with the projected timber harvest in the Harvest Land Base land use allocation, the management direction implemented under the RMPs is consistent with the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) and would not appreciably diminish the conservation value of, or adversely modify, critical habitat (FWS 2016, p. 702). Because we had this updated information and analysis, we reconsidered whether exclusion of these areas was appropriate. We have determined that the benefits of exclusion of the Harvest Land Base land outweigh the benefits of including these areas, and that exclusion of these lands will not result in the extinction of the northern spotted owl. See our exclusion and extinction analyses for Harvest Land Base lands under Consideration of Impacts Under Section 4(b)(2) of the Act.

The January Exclusions Rule, which excluded all areas managed by the BLM under the O&C Act, including reserves as well as the Harvest Land Base, states that excluding the 3.4 million acres (1.4 million hectares) identified in that rule will not cause the extinction of the northern spotted owl. As discussed in our proposed rule, on reconsideration we find that conclusion is not supported by the science of conservation biology, the current population trend of the northern spotted owl, nor the purpose of the Act. See our analysis in the Withdrawal of the January Exclusions Rule section of this rule for a more detailed discussion.

Comment (5): A commenter stated that smaller blocks of northern spotted owl critical habitat, such as those areas in the Harvest Land Base proposed for exclusion, are also important for the following reasons: They are migration/dispersal corridors linking larger habitat blocks; they link the Coast Range province with the Cascade Range province; and they provide migration corridors that allow a species to adapt to climate (and habitat) change by relocating to higher quality habitat.

Our response: See our response to *Comment (3).* Additionally, the BLM manages the Harvest Land Base acres in accordance with the management direction of the BLM RMPs (BLM 2016a, 2016b). In our 2016 Biological Opinion on the BLM RMPs (FWS 2016), we found that, even with the projected timber harvest in the Harvest Land Base, the area would continue to function for the dispersal of northern spotted owls and would provide connectivity between large blocks of habitat designed to support clusters of reproducing northern spotted owls.

Comment (6): Commenters stated we failed to explain why the Service no longer believes that Oregon and California Railroad Revested Lands (O&C lands) make a significant contribution toward meeting the conservation objectives for the northern spotted owl and that we cannot attain recovery without them. Other commenters expressed concern about excluding lands in southwest Oregon where the majority of O&C lands occur.

Our response: The O&C lands were revested to the Federal Government under the Chamberlin-Ferris Act of 1916 (39 Stat. 218). The Oregon and California Revested Lands Sustained Yield Management Act of 1937, Public Law 75–405 (O&C Act) addresses the management of O&C lands. The O&C Act identifies the primary use of revested timberlands for permanent forest production. The Harvest Land Base lands that we exclude in this revision are mostly on O&C lands managed by the BLM under the 2016 RMPs. However, portions of O&C lands, outside of the Harvest Land Base, that are managed by either the BLM or the USFS that provide essential habitat and are located in a spatial configuration that provides connectivity across the designation are still important to northern spotted owl conservation and are retained as critical habitat in this revision. As we noted above, we found in our 2016 Biological Opinion on the BLM RMPs (FWS 2016, p. 700) that, even with the projected timber harvest in the Harvest Land Base land use allocation, the management direction implemented under the RMPs is consistent with the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) and would not appreciably diminish the conservation value of, or adversely modify, critical habitat (FWS 2016, p. 702). Thus, for the reasons explained in Consideration of Impacts Under Section 4(b)(2) of the Act, we have excluded the Harvest Land Base from the critical habitat designation. This conclusion is based in part on the expectation that these lands and the remaining designated critical habitat in other land use allocations will be managed consistent with the BLM's 2016 RMPs.

The January Exclusions Rule, because it excluded all O&C lands, provided a different response to this comment: ''The O&C Act provides, and the courts have confirmed, that the primary use of these revested timberlands is for permanent forest production on a sustained yield basis. The Supreme Court has additionally determined that the ESA does not take precedence over an agency's mandatory (non-discretionary) statutory mission. Based on these court rulings, we have determined that exclusion of the O&C

lands as critical habitat is proper in this case.'' 86 FR 4820, January 15, 2021, p. 4822.

Though not stated explicitly, this response implied (and has been interpreted by some commenters to mean) that the O&C Act removes any discretion the BLM may have in how to manage the O&C lands on a sustained-yield basis such that the Endangered Species Act does not apply to the BLM's management of those lands at all. We take this opportunity to correct that implication. Courts reviewing the BLM's management of O&C lands have found that the BLM retains discretion as to how to achieve sustained yield timber production. *See AFRC* v. *Hammond,* 422 F.Supp. 3d 184 at 190–91 (D.D.C. 2019); *see also Swanson Grp. Mfg. LLC* v. *Salazar,* 951 F. Supp. 2d 75, 82 (D.D.C. 2013), *vacated on other grounds sub nom. Swanson Grp. Mfg. LLC* v. *Jewell,* 790 F.3d 235 (D.C. Cir. 2015); *Portland Audubon Soc.* v. *Babbitt,* 998 F.2d 705, 709 (9th Cir. 1993).

None of these courts—including *AFRC* v. *Hammond,* that found legal infirmities in the BLM's adoption of its 2016 RMPs—has held that the O&C Act precludes the BLM from considering opportunities to conserve threatened and endangered species when authorizing actions on O&C lands. Indeed, that district court decision narrowly ruled only that BLM lacks the authority to designate *reserves* on O&C lands because it violates the mandate to manage those lands for sustained yield timber harvest. It expressly stated that BLM had discretion in the management of those lands, and certainly did not hold that BLM lacks such discretion altogether. To the extent the January Exclusions Rule relied on the assumption to the contrary, it was incorrect. In short, ''reserves'' are not the same as designated critical habitat.

In any case, as we discuss further in Consideration of Impacts Under Section 4(b)(2) of the Act, we conclude that the exclusion of some O&C lands from the designation as critical habitat is appropriate, but the exclusion of all O&C lands is not.

Public Comments Regarding the Northwest Forest Plan (NWFP) or the BLM Revised Resource Management Plans (RMPs)

Comment (7): Commenters expressed concern that exclusions would allow BLM to harvest timber without project-specific consultation under section 7 of the Endangered Species Act. Commenters also expressed concern that the Service no longer considers habitat fitness when assessing project effects and incidental take in section 7 consultations. Commenters further assumed that section 7 consultations would be required only if surveys confirm northern spotted owl presence, which commenters considered problematic because they conclude we cannot reliably detect northern spotted owls when barred owls are present. Thus, critical habitat provides a benefit through section 7 review likely resulting in the retention of the physical and biological features needed by northern spotted owls, which cannot be addressed otherwise through section 7 consultations.

Our response: We completed a programmatic section 7 consultation on the BLM RMPs in 2016, under the assumption that BLM will implement actions consistent with the RMPs' specific management direction over an analytical timeframe of 50 years (FWS 2016, p. 2). This approach allowed us to evaluate at a broad scale BLM's plans to ensure that the management direction and objectives are consistent with the conservation of listed species. We found that the BLM's plans, at the programmatic scale, were not likely to jeopardize the continued existence of the northern spotted owl, or destroy or adversely modify the owl's designated critical habitat (FWS 2016).

In our July 20, 2021, proposed revision to the critical habitat designation, we explained that Federal actions in the Harvest Land Base that may affect designated critical habitat require section 7 consultation at the project-level scale. As discussed further below in Consideration of Impacts Under Section 4(b)(2) of the Act, based on our experience in project consultations since the BLM 2016 RMPs were implemented, addressing effects to designated critical habitat in the Harvest Land Base provides no incremental conservation benefit over the conservation already provided for in the BLM RMPs (2016a, 2016b) and project-level consultations that still occur regardless of the presence of critical habitat. Thus, continuing to require BLM to include an analysis of effects to designated critical habitat in the Harvest Land Base within otherwise triggered, project-level consultations is not contributing to the conservation and recovery of the subspecies, nor is it an efficient use of limited consultation and administrative resources.

With the exclusions finalized here, actions within the Harvest Land Base that affect northern spotted owl habitat (even if that habitat is no longer designated as critical) will still be subject to section 7 consultation to ensure that actions are not likely to jeopardize the continued existence of the subspecies, but we are removing the regulatory burden to consult under section 7 to address designated critical habitat by excluding the Harvest Land Base. We have consulted on the program of timber harvest planned under the RMPs, which will occur primarily in the Harvest Land Base. We already determined in that consultation (FWS 2016) that harvest in the Harvest Land Base will not appreciably diminish the value of the critical habitat for the conservation of the northern spotted owl and that BLM's management approach provided under the RMPs will sustain critical habitat over time. Northern spotted owls are expected to continue to be able to disperse across the landscape due to the habitat conditions and protections in the Late-Successional Reserves and Riparian Reserves, the stand retention incorporated into the management direction for timber harvest in the Harvest Land Base, and because any detrimental effects to northern spotted owl dispersal capability will be spread over 50 years during which time ingrowth in the reserves will also be occurring. The BLM's revised 2016 RMPs included approximately 177,000 additional acres (71, 630 hectares) of reserved lands compared to lands originally reserved under the NWFP in 1994; these acres contribute additional dispersal capability across the management area. These factors represent a significant improvement in the capability of the landscape to provide for spotted owl movement and dispersal. Given these provisions and assurances, in conjunction with all of the other considerations discussed in Consideration of Impacts Under Section 4(b)(2) of the Act, we conclude that the benefits of including these Harvest Land Base areas as designated critical habitat are relatively minor when compared to the benefits of excluding them.

The commenter is incorrect in stating that we do not consider habitat fitness in our evaluations of effects in section 7 consultations for the subspecies in the absence of affected designated critical habitat. We consult on Federal actions that have effects to northern spotted owl habitat even if it is not designated as critical habitat, regardless of whether the subspecies currently occupies that habitat, and consider this information in our analysis of whether the action is likely to jeopardize the continued existence of the subspecies. The commenter may be confusing the question of ''occupancy'' for consideration of whether ''incidental take'' of the species will occur. Even if we conclude that a Federal action that

adversely affects habitat does not result in a ''jeopardy'' finding for the species, we must still assess whether the Federal action will result in the incidental take of the species. Because ''take'' of the species is dependent in part on the Federal action proximately causing actual injury to the species, information about the presence or absence of the animal during the proposed activity (often referred to in the terminology of ''occupied'' versus ''unoccupied'') is particularly relevant. In order to evaluate whether a Federal action affecting northern spotted owl habitat will incidentally ''take'' that subspecies, we consider a number of factors, including habitat effects and survey results for the presence of the owl. As a result, in some cases we may find that adverse effects to northern spotted owl habitat (not designated as critical habitat) will occur, but we are unable to conclude with reasonable certainty that the habitat effects will result in incidental ''take'' of the owl. See *Arizona Cattlegrower's Assn.* v. *U.S. Fish and Wildlife Serv.,* 273 F.3d 1229 (9th Cir. 2001).

The commenter is correct that detectability of northern spotted owls is reduced when barred owls are present, which led us to endorse an updated protocol for surveying for northern spotted owls to take this into account (FWS 2012), a protocol that has been upheld on review by the courts (*Cascadia Wildlands* v. *Thrailkill,* 49 F. Supp. 3d 774, 779–80 (D. Or. 2014), *aff'd,* 806 F.3d 1234 (9th Cir. 2015)). Our jeopardy analysis considers the effects to habitat regardless of occupancy. With the exclusions finalized today, Federal agencies will no longer have the obligation to consult on the effect of their actions to (formerly) designated critical habitat in the areas excluded. They will still be required to consult with us if their discretionary actions result in effects to northern spotted owl habitat that remains, and they will be precluded from jeopardizing the subspecies as a result of that habitat modification. We will also still continue to evaluate whether the Federal actions affecting habitat, even if they do not jeopardize the subspecies, result in the incidental take of northern spotted owls, and if so, will identify reasonable and prudent measures and terms and conditions to minimize that incidental take.

Comment (8): Commenters expressed concern that wildlife provisions in the BLM RMPs do not apply in the Harvest Land Base and that the exclusion of critical habitat would remove overlapping protections.

Our response: According to the 2016 BLM RMPs for western Oregon, the management objectives and management direction described for resource programs (including wildlife) apply across all land-use allocations, unless otherwise noted (BLM 2016a, p. 47, BLM 2016b, p. 47). Regarding overlapping protections, see our response to *Comment (7)* for our rationale for excluding these lands from critical habitat for the northern spotted owl.

Comment (9): Commenters stated that we should consider the impact of recent wildfires that have occurred in Washington, Oregon, and California on the northern spotted owl and its habitat since the 2016 BLM RMPs were finalized, and that recent events make the modeling and analyses in the RMPs ineffective and obsolete. Commenters noted that the number of acres burned has exceeded the number of acres affected by wildfire that were modeled for the first decade in the BLM RMPs. Commenters further stated that excluding lands from critical habitat will lead to more regeneration logging, which will lead to increased fuels and uncharacteristic wildfire and that additional critical habitat should be designated in order to protect forests from regeneration harvest and further the objectives of the final recovery plan to provide habitat redundancy and avoid fire hazard.

Our response: In September 2020, several major wildfires burned across portions of the range of the northern spotted owl in Washington, Oregon, and California affecting habitat conditions. The fires impacted multiple ownerships, including Federal lands managed by the BLM and USFS, State lands, and private lands. Although the wildfires that occurred during the fall of 2020 had significant impacts to some critical habitat units at the local level, the longer term impacts to spotted owl conservation will vary depending on fire severity (see our discussion in *Comment (27b)* regarding the use of previously burned habitat). Although some subunits have experienced a partial and/or temporary reduction in connectivity in places, overall the critical habitat units and the rangewide network designated in 2012 will continue to provide demographic support and connectivity to the northern spotted owl as intended in the 2012 critical habitat designation.

The 2012 critical habitat rule was an increase in designated area compared to previous designations, in part to provide for biological redundancy in northern spotted owl populations and habitat by maintaining sufficient habitat on a landscape level in areas prone to frequent natural disturbances, such as the drier, fire-prone regions of its range (Noss *et al.* 2006, p. 484; Thomas *et al.* 2006, p. 285; Kennedy and Wimberly 2009, p. 565). The historical range of the northern spotted owl within Oregon, Washington, and California is about 57 million acres (23 million hectares), including both Federal and non-Federal (33 million) acres (USDA–USFS and DOI–BLM 1993, p. 23). The Northwest Forest Plan area, which was explicitly identified in 1994 to encompass the range of the northern spotted owl on Federal lands, is approximately 25 million acres (10 million hectares) in size and included 19 National Forests, 7 BLM Districts, and other Federal lands. The 2012 designation of 9.6 million acres (3.9 million hectares) of critical habitat (reduced in this revision to approximately 9.4 million acres (3.8 million hectares)) is a parsimonious and scientifically appropriate identification of only those lands within these 25 million acres (10 million hectares) that are critical to the conservation and recovery of the spotted owl.

The 2012 designation is based upon almost three decades of scientific research on the spotted owl. Estimating actual historical forested habitat within this range is difficult, but during our evaluation of whether to list the northern spotted owl, we concluded the best available information was that some 17.5 million acres (7 million hectares) of ''suitable'' habitat were available to the owl historically, before the advent of significant timber harvesting of old growth forests (55 FR 26114, June 26, 1990; p. 26151). When we initially designated critical habitat for the owl in 1992, we estimated that only 7.2 million acres (2.9 million hectares) of this ''suitable'' habitat (in this context meaning the types of older, more mature stands preferred by the northern spotted owl for nesting, roosting, and foraging when available in an area) remained on Federal lands, and most of it (60 percent) was in land allocations available for harvest (57 FR 1796, January 15, 1992; p. 1799). We found in the 1992 critical habitat designation that the best available information was that it could all be removed within 25–30 years (57 FR 1796, January 15, 1992; p. 1800). The critical habitat revision in 2012 was built upon this scientific work, while also incorporating the best available updated scientific information and taking into account more recent concerns such as the barred owl invasion, climate change, and the

increasing impacts associated with severe wildfire.

In the development of habitat conservation networks generally, the intent of spatial redundancy is to increase the likelihood that the network and populations can sustain habitat losses by inclusion of multiple populations unlikely to be affected by a single disturbance event. This redundancy is essential to the conservation of the northern spotted owl because disturbance events such as fire can potentially remove large areas of habitat with negative consequences for northern spotted owls. The evaluation process used by the Service incorporates the recommendations of the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) by addressing spatial redundancy at two scales: By (1) making critical habitat subunits large enough to support multiple groups of owl sites, and (2) distributing multiple critical habitat subunits within a single geographic region. This was particularly the case in the fire-prone Klamath and Eastern Cascades portions of the range.

In summary, we acknowledge that the recent wildfires had negative impacts on some local northern spotted owl populations and critical habitat subunits and that future fires are likely to have additional negative impacts. However, the additional exclusions we make here represent a relatively small area compared with the designated areas that remain, and they do not appreciably diminish the conservation value of the designation to the northern spotted owl. These areas that remain in the designation will be managed in the long term for northern spotted owl conservation under the Northwest Forest Plan (NWFP) (USFS and BLM 1994a, USFS and BLM 1994b) and BLM RMPs (BLM 2016a, BLM 2016b) and are expected to provide an adequate amount of habitat at the listed-entity scale to withstand periodic natural disturbances such as wildfire.

Regarding the comment that exclusions will lead to regeneration harvest and subsequent increased fuel load and uncharacteristic wildfire, we assume the Harvest Land Base will continue to be managed consistent with the management direction defined in the 2016 RMPs. As previously stated, we found in our 2016 Biological Opinion on the BLM RMPs (FWS 2016, p. 700) that, even with the projected timber harvest in the Harvest Land Base land use allocation, the management direction implemented under the RMPs is consistent with the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) and would not appreciably diminish the conservation value of, nor adversely modify, critical habitat (FWS 2016, p. 702).

The January Exclusions Rule considered that one benefit of exclusion could be a lessening of the regulatory burdens for discretionary Federal decisions when considering management practices to protect forested lands from catastrophic wildfire. See our responses to *Comments (1)* and *(27a)* regarding section 7 consultation and the recommendations in our 2012 critical habitat rule for fuels management and dry forest restoration projects.

Comment (10): A commenter expressed concern that habitat for the northern spotted owl will not grow as projected in the Recovery Plan and the BLM RMPs due to climate change and the combined effects of increased fire, insects, disease, storms, and carbon enrichment. Commenters stated that the exclusions will lead to more logging and greenhouse gas emissions and that mitigating the risks of climate change requires greater conservation of northern spotted owl habitat, particularly older forests that store significant amounts of carbon; therefore, these additional exclusions should not be made.

Our response: As mentioned earlier, the 2012 spotted owl critical habitat designation was enlarged from previous designations, in part to provide increased redundancy in the face of climate change. We analyzed climate change and its potential impact on spotted owl recovery in the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011). We noted the combined effects of climate change and past management practices are altering forest ecosystem processes and dynamics (including patterns of wildfires, insect outbreaks, and disease) to a degree greater than anticipated in the NWFP. The Recovery Plan encourages land managers to consider this uncertainty and how best to integrate knowledge of management-induced landscape pattern and disturbance regime changes with climate change when making spotted owl management decisions. The Recovery Plan further recommended an adaptive management approach to reduce scientific uncertainties. Recovery Action 5 in the Recovery Plan for the Northern Spotted Owl states: ''Consistent with [Secretarial] Order 3226, as amended, the Service will consider, analyze and incorporate as appropriate potential climate change impacts in long-range planning, setting priorities for scientific research and investigations, and/or when making major decisions affecting the spotted owl'' (FWS 2011, p. III–11). The Recovery Plan acknowledged the uncertainty associated with estimating rates of habitat recruitment (FWS 2011, p. B–8).

The BLM RMPs state that if the need for adaptive management to address changes in the climate would so alter the implementation of actions consistent with the RMPs that the environmental consequences would be substantially different than those anticipated in the Proposed RMP/Final Environmental Impact Statement, then the BLM would engage in additional planning steps and procedures under the National Environmental Policy Act (NEPA) (BLM 2016a, p. 111). Additionally, the effects of climate change will be considered in the development of forest management actions and analyzed in future NEPA analyses and section 7 consultations at the project level.

The BLM may also apply adaptive management by taking additional planning steps and NEPA procedures based on information found through the monitoring questions (Appendix B) (BLM 2016a, p. 111; BLM 2016b, p. 133). The late-successional and old-growth ecosystems effectiveness monitoring program characterizes the status and trend of older forests to answer the basic question: Is implementation of the BLM RMPs maintaining and restoring late-successional and old-growth forest ecosystems to desired conditions on Federal lands in the planning area? (BLM 2016a, p. 116; BLM 2016, p. 138). Effectiveness monitoring reports will also include analysis of whether the BLM is achieving desired conditions based on effectiveness monitoring questions and, where possible, inform adaptive management (BLM 2016a, p. 111; BLM 2016b, p. 139). As discussed further in our response to *Comment (33),* we established benchmarks in our biological opinion on the BLM's RMPs for evaluating the effectiveness of their program.

In sum, BLM's RMPs are consistent with the Recovery Plan recommendations for addressing uncertainty, and provide the tools for adaptive management if needed to address effects from climate change. The Harvest Land Base exclusions finalized here will not impair that adaptability.

Comment (11): Commenters asserted that our statement in the proposed rule that the proposed exclusion provides ''no incremental conservation benefit over what is already provided for in the RMPs'' conflicts with the Service's prior finding that the owl ''fared very poorly''

on reserves within the NWFP compared to designated critical habitat.

Our response: The statement concerning ''reserves faring very poorly'' in the 2012 critical habitat rule was in reference to a modeling scenario where we tested population performance of a potential critical habitat designation based on only NWFP reserves. Our 2012 designation was not based on this modeling scenario. The critical habitat designation retains northern spotted owl habitat in reserve land-use allocations, and retains northern spotted owl habitat in the matrix and some non-Federal public lands that we found essential to the conservation of the subspecies. The designation of these lands was supported by our statement in the 2012 critical habitat rule: ''In some areas, for example the O&C lands, our modeling results indicated that those Federal lands make a significant contribution toward meeting the conservation objectives for the northern spotted owl in that region, and that we cannot attain recovery without them. Likewise, in addition to our modeling results, peer review of both the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) as well as our proposed rule to revise critical habitat, suggested that retention of high-quality habitat in the matrix is essential for the conservation of the subspecies. Population performance based on reserves under the NWFP, for example, fared very poorly compared to this final designation of critical habitat. As described in the section Changes from the Proposed Rule, we tested possible habitat networks without many of these matrix lands, which resulted in a significant increase in the risk of extinction for the northern spotted owl.'' (77 FR 71876, December 4, 2012; p. 72007).

We are excluding the portion of O&C lands (approximately 172,712 acres (69,894 hectares)) allocated by the BLM to the Harvest Land Base. The remaining O&C lands under USFS and BLM management (1,209,229 acres (489,357 hectares)) are retained within the critical habitat designation in this final rule. We have determined that the benefits of exclusion of the Harvest Land Base land outweigh the benefits of including these areas, and that exclusion of these lands will not result in the extinction of the northern spotted owl. See our discussion of the benefits of exclusion versus inclusion of Harvest Land Base lands in Consideration of Impacts Under Section 4(b)(2) of the Act.

Comment (12): Commenters expressed concern that the BLM RMPs that we rely on for our basis for exclusions could be vacated due to current litigation and that the protection in place under the 2016 RMPs would no longer apply.

Our response: A district judge in the U.S. District Court for the District of Columbia found that the BLM RMPs violate the O&C Act because BLM excluded portions of O&C timberland from sustained yield harvest (*i.e.,* the BLM allocated some timberlands to reserves instead of the Harvest Land Base); *see, American Forest Resource Council et al.* v. *Hammond,* 422 F.Supp.3d 184 (D.D.C. 2019). Although a decision as to remedy has not yet been issued, depending on the final outcome of that litigation, the Harvest Land Base might change through court order or land use planning by BLM. We have excluded lands based on the BLM RMPs as they are, not as they may be modified in the future. See also our response to *Comment 25(b),* below, and our reconsideration of the weighing of the benefits of inclusion versus the benefits of excluding these lands and our extinction analysis in Consideration of Impacts Under Section 4(b)(2) of the Act.

Public Comments on Competition From Barred Owls

Comment (13): Commenters expressed the importance of preserving mature and old-growth forest for spotted owls in light of competition with barred owls and stated that the Service has not fully explored how much more habitat needs to be conserved to mitigate for northern spotted owl habitat occupied by barred owls. Commenters stated that reducing critical habitat will increase the probability of competitive exclusion and that we should not reduce critical habitat without a barred owl management plan in place.

Our response: In addition to the effects of historical and ongoing habitat loss, the northern spotted owl faces a significant and complex threat in the form of competition from the congeneric (referring to a member of the same genus) barred owl (FWS 2011, pp. I–7 to I–8). Franklin *et al.* (2021) found that spotted owl populations declined 6 to 9 percent annually on 6 demographic study areas and 2 to 5 percent annually on 5 study areas. Applying the annual rates of decline, populations dropped to or below 35 percent of the historical population on 7 of the study areas, and to or below 50 percent on the remaining 3 areas over a 22-year period (1995–2017). The presence of barred owls on spotted owl territories was the primary factor negatively affecting apparent survival, recruitment, and thus the population change, and was a contributing factor in our recent determination that the subspecies warranted reclassification to endangered status.

An analysis of occupancy based on northern spotted owl and barred owl detections supported the conclusion that barred owl presence has a negative effect on northern spotted owls, increasing territorial extinction and decreasing territorial colonization of spotted owls. While barred owl occupancy was the dominant negative effect on spotted owl territory occupancy and population trend, other factors such as habitat condition had a weaker, but positive, effect on occupancy and trend. These other factors such as habitat were insufficient to reverse the negative trend, but suggest the importance of maintaining spotted owl habitat on the landscape, even if it is unoccupied, in the face of competitive exclusion by barred owls, as noted by Dugger *et al.* 2011. The authors in Franklin *et al.* (2021) noted that maintenance of habitat across the landscape would (1) provide areas available for recolonization by northern spotted owls should management actions allow for reduction of barred owl populations and (2) facilitate connectivity by dispersing northern spotted owls among occupied areas, citing to Sovern *et al.* 2014. The authors stated, ''Our analyses indicated that northern spotted owl populations potentially face extirpation if the negative effects of barred owls are not ameliorated while maintaining northern spotted owl habitat across their range.'' (Franklin *et al.,* 2021, p. 19)

The Service conducted experimental removal of barred owls to test its efficacy in improving spotted owl demographic performance on four study areas spread across the northern spotted owl range in Washington, Oregon, and northern California. Peer-reviewed analysis of the experiment (Wiens *et al.* 2021) showed a strong, positive effect of barred owl removal on survival of spotted owls in the treated areas and a weaker but positive effect on spotted owl dispersal and recruitment. The estimated mean annual rate of population change for spotted owls stabilized in areas with removals (0.2 percent decline per year), but continued to decline sharply in areas without removals (12.1 percent decline per year). Barred owl removal had a strong positive effect on spotted owl survival, which was the primary factor in stabilizing the populations. Barred owl removal also demonstrated a weaker, though still positive, effect on recruitment of new spotted owls to the territorial populations. This weaker

response is probably due to the depressed reproduction in recent years and the subsequent limited availability of new recruits. The experiment demonstrated that barred owl removal can achieve rapid results in improving the persistence of northern spotted owls, though effects on reproduction and long-term population trend will take a longer period of management effort.

These two analyses (Wiens *et al.* 2021, and Franklin *et al.* 2021) indicate that, while barred owl presence was the primary and strongest driver of spotted owl population trend leading to the rapidly decreasing spotted owl populations, habitat availability and quality were important components of managing for the survival and recovery of spotted owls in the future. The Service is in the process of developing a barred owl management strategy, using the information from both of these studies.

Similar to our response above to the comment suggesting the need for increased habitat redundancy in the face of catastrophic wildfire, we find that the critical habitat designation, which includes more area than what was previously designated in 1992 and 2008, is consistent with the Revised Recovery Plan for the Northern Spotted Owl (2011) and provides for the conservation of northern spotted owls as they face growing competition from barred owls. The exclusions we finalize here are not of a scale to appreciably affect that approach. See also our discussion of our analysis in the biological opinion on BLMs RMPs and their approach to barred owl management in our responses to *Comments (15, 18, and 33).*

Other Public Comments

Comment (14): Commenters asked why regulatory oversight of critical habitat is no longer necessary in light of the Service's previous position that old-growth reserves of the Northwest Forest Plan ''are plan-level designations with less assurance of long-term persistence than areas designated by Congress. Designation of Late-Successional Reserve) as critical habitat complements and supports the Northwest Forest Plan and helps to ensure persistence of this management directive over time'' as well as the Service's prior statements that critical habitat has significant additional value to listed species separate from any value provided by land management plans. Commenters further stated that our previous position is in contrast to our statement in the proposed rule that these exclusions are to ''clarify the primary role of these lands in relation to northern spotted owl conservation,'' and ''eliminat[e] any unnecessary regulatory oversight.''

Our response: In this final rule, we are not excluding lands within reserve land use allocations from the critical habitat designation. Our exclusion of the Harvest Land Base lands managed by BLM is based on new information since the December 4, 2012, critical habitat designation (77 FR 71876), *i.e.,* the 2016 BLM RMPs and our evaluation of those RMPs through the section 7 consultation process. As described earlier, the lands we exclude in this final rule were already reviewed for their value to long-term spotted owl conservation in the 2016 Biological Opinion on the BLM RMPs, and the RMPs provide a robust long-term conservation strategy that is consistent with the goals of the 2011 Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) and the 2012 critical habitat designation.

The January Exclusions Rule, in justifying the exclusion of 3.4 million acres (1.4 million hectares), stated that even on excluded lands, all discretionary Federal actions and decisions on areas that are occupied by the subspecies will be required to undergo section 7 consultation if such action or decision ''may affect'' the northern spotted owl and that such consultation will ensure that the continued existence of the northern spotted owl is not jeopardized. See our further review of these statements in our response to *Comment (3)* and our reconsideration of the weighing of the benefits of inclusion versus the benefits of excluding these lands and our extinction analysis in Consideration of Impacts Under Section 4(b)(2) of the Act.

Comment (15): Commenters stated that when the critical habitat designation was originally established, it was understood that much of the old forest reserves would require considerable time to recover old-growth characteristics and support northern spotted owl reproduction, having been subject to logging prior to 1990 and that critical habitat should not be reduced until the reserve system is fully restored. The commenters asserted that much of the occupied habitat in the Harvest Land Base would need to be left unlogged during the intervening time, to assure an ecologically sustainable continuity of old-growth forest, with no significant net loss.

Our response: In our 2016 Biological Opinion on the BLM RMPs, we concluded that there will be a net increase in habitat for northern spotted owls during the life of the RMPs due to forest ingrowth outpacing harvest, and the RMPs containing more reserve acres and habitat than the NWFP (FWS 2016, p. 5). During the first 5 to 8 years of the RMPs, the BLM will implement measures to avoid take of northern spotted owls until implementation of a barred owl management program has begun. In addition, subsequent effects to northern spotted owls would be meted out over time in the Harvest Land Base and minimized in other land use allocations. These measures in the RMPs will minimize near-term negative effects to occupied northern spotted owl habitat in the Harvest Land Base as habitat continues to further develop late-successional characteristics in the reserve land use allocations.

Comment (16): Commenters stated that our proposal to exclude the Harvest Land Base lands ignores the northern spotted owl Recovery Plan recommendation to protect older, complex forests on Federal lands west of the crest of the Cascades range.

Our response: We relied on the recovery criteria set forth in the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) to determine what is essential to the conservation of the subspecies and identified a critical habitat designation that ensures sufficient habitat to support stable, healthy populations across the range and within each of the 11 recovery units.

The Revised Recovery Plan for the Northern Spotted Owl relies on the NWFP's Late-Successional Reserve network as the foundation for northern spotted owl recovery on Federal lands (FWS 2011, p. III–41). The revised plan recommended ''continued application of the reserve network of the NWFP until the 2008 designated spotted owl critical habitat is revised and/or the land management agencies amend their land management plans taking into account the guidance in this Revised Recovery Plan'' (FWS 2011, p. II–3). BLM's 2016 revision of its RMPs fully considered the 2011 Recovery Plan recommendation.

The BLM RMPs provide protection to older, complex forests through the system of reserves. Reserve land use allocations (Late-Successional Reserve, Congressionally Reserved Lands and National Conservation Lands, District-Designated Reserves, Riparian Reserve) comprise 74.6 percent (1,847,830 acres (747,790 hectares)) of the acres of BLM land within land use allocations (FWS 2016, p. 9). These lands are managed for various purposes, including preserving wilderness areas, natural areas, and structurally complex forest; recreation management; maintaining facilities and infrastructure; some timber harvest and fuels management; and conserving lands

along streams and waterways. Of these lands, 51 percent (948,466 acres (383,830 hectares)) are designated as Late-Successional Reserve, 64 percent of which (603,090 acres (244,061 hectares)) are located within the critical habitat designation for the northern spotted owl (FWS 2016, p. 9). The management objectives on Late-Successional Reserve are designed to promote older, structurally complex forest and to promote or maintain habitat for the northern spotted owl and marbled murrelet (*Brachyramphus marmoratus*). In this final rule, we are not excluding lands within reserve land use allocations from the critical habitat designation.

The January Exclusions Rule stated that ''the correct analysis for purposes of section 4(b)(2) is whether the Secretary concludes that the specific exclusion of these areas of critical habitat will result in the extinction of the species.'' We agree with this statement; however, see our reconsideration of the weighing of the benefits of inclusion versus the benefits of excluding these lands and our extinction analysis in Consideration of Impacts Under Section 4(b)(2) of the Act.

Comment (17): Commenters expressed concern that excluding critical habitat will impede recovery of the northern spotted owl and that we should not exclude areas that contain sites with a history of northern spotted owl reproduction.

Our response: In our 2016 Biological Opinion on the 2016 Revised BLM RMPs, we found that the conservation needs of the northern spotted owl will continue to be met because the BLM's plan is consistent with the guidance of the northern spotted owl Recovery Plan, at the landscape scale over 50 years, as follows:

- The BLM RMPs will conform to the northern spotted owl Recovery Plan, including the location and function of large blocks of habitat for reproducing spotted owls and the ability of the landscape to support spotted owl movement between those blocks.
- The BLM RMPs will include approximately 177,000 more acres (71,629 hectares) of Late-Successional Reserve and Riparian Reserves than in the NWFP, which will be managed for the retention and development of large trees and complex forests across the RMP landscape.
- The BLM RMPs will improve the amount, quality, and distribution of nesting habitat on BLM lands over the first 50 years modeled under the RMPs through management of these increased reserves.
- The BLM RMPs will facilitate and improve northern spotted owl dispersal capability across the landscape through the management of the increased reserves.

Given the management, spatial configuration, and projected improvement of habitat in the reserves, we find that excluding the Harvest Land Base lands will not preclude recovery of the northern spotted owl if the 2016 RMPs are implemented as described. In addition, the Indian lands excluded herein represent only 0.21 percent of the overall designation; we have found that we can achieve the conservation of the northern spotted owl by limiting the designation to other lands.

The January Exclusions Rule determined that the exclusion of 3.4 million acres (1.4 million hectares) from the critical habitat designation outweighed the benefits of inclusion, and that, based upon the best scientific and commercial data available, it did not conclude that exclusion of those areas will result in extinction of the subspecies. See our reconsideration of the weighing of the benefits of inclusion versus the benefits of excluding these lands and our extinction analysis in Consideration of Impacts Under Section 4(b)(2) of the Act.

Comment (18): Commenters expressed concern that the downward trend in northern spotted owl populations has continued since the 2016 BLM RMPs were finalized, and that we should evaluate the 2020 meta-analysis (demographic analyses that are performed every 5 years under the NWFP) prior to making changes in the critical habitat designation. Commenters further expressed concern that we should be conserving more habitat in light of the Service's recent finding that the northern spotted owl warrants reclassification to endangered status.

Our response: The most recent meta-analysis, Franklin *et al.* (2021), found that the northern spotted owl continues to suffer a significant population decline across its range, due primarily in recent years to increasing competition from the invasive and aggressive barred owl. Unless barred owls are proactively managed while also maintaining northern spotted owl habitat across the range, northern spotted owls are likely to become extirpated across portions of their range (Franklin *et al.* 2021, pp. 18–19).

We find the BLM RMPs provide an approach that minimizes negative impacts to spotted owls and offsets these impacts with proactive positive actions providing for the long-term survival and recovery of the northern spotted owl. When considered in its entirety, implementation of the BLM RMPs will have both negative and positive effects on the northern spotted owl. Negative impacts will primarily be due to resource utilization such as timber harvest on less than one-quarter of the BLM land base, and other resource programs. Positive effects of the plan will accrue due to the following: An increase in the total area of protected forest reserves on BLM lands (approximately 80 percent of BLM ownership); BLM's management of forest habitat to increase the rate of development of late-successional conditions; and BLM's support for, and cooperation in, the barred owl removal experiment and a potential barred owl management program (see our response to *Comment (13)* regarding the completion of the barred owl removal experiment and the development of a barred owl management program). When aggregating these negative and positive impacts with the environmental baseline, it is our conclusion that the impact of the BLM RMPs will be a net conservation gain for the northern spotted owl during the next 50 years under the plans.

Over the 50-year life of the BLM RMPs (BLM 2016a, BLM 2016b), there will also be a significant net gain over current levels in spotted owl habitat largely within reserves that will be managed to maintain and produce high-quality spotted owl habitat of the kind preferred by owls for nesting, roosting, and foraging when available in an area. This increase will provide large blocks of habitat of Federal land capable of supporting more than 25 spotted owl pairs. Spotted owl dispersal through these areas also will continue to be facilitated and is expected to improve over time under BLM's management.

Although impacts to spotted owl habitat in the Harvest Land Base were anticipated, wherever possible those impacts will be spread out over time to minimize site abandonment as a barred owl management strategy is implemented. Given this, and the landscape of reserves providing for blocks of habitat and northern spotted owl movement consistent with the recovery needs of the spotted owl, we concluded the BLM RMPs will not appreciably diminish the ability of the BLM lands to provide for a well-distributed population of owls.

Because of the expected retention and improvement of northern spotted owl populations on BLM lands, the Service concluded that implementation of the BLM RMPs would not represent an appreciable reduction in the likelihood of survival and recovery of the northern spotted owl in the wild due to

reductions in reproduction, numbers, or distribution (FWS 2016, p. 624). BLM's commitment to participate in and support a barred owl management strategy, combined with the RMPs' allocation of reserves, is projected to result in a significant improvement in the northern spotted owl population's trend, and in the reproduction, numbers, and distribution over projected baseline conditions with no barred owl management and no timber harvest.

Comment (19): Commenters stated that the BLM and Service cannot avoid their duties under the ESA simply because the area in question involves O&C lands and that section 4(b)(2) exclusions should not be used as a tool to circumvent section 7 consultation recommendations.

Our response: Our rationale for excluding the Harvest Land Base is not to circumvent section 7 consultation, nor because the area in question involves O&C lands. Rather, we have concluded based on our programmatic review in our Biological Opinion on the BLM 2016 RMPs, and our experience in project consultations since the BLM 2016 RMPs were implemented, that addressing effects to designated critical habitat in the Harvest Land Base provides no incremental conservation benefit over the conservation already provided for in the BLM RMPs (2016a, 2016b) and project-level consultations that still occur regardless of the presence of critical habitat. Thus, continuing to designate critical habitat in order to require BLM to include effects to critical habitat designated in the Harvest Land Base within otherwise triggered, project-level consultations is not contributing to the conservation and recovery of the subspecies, nor is it an efficient use of limited consultation and administrative resources.

The January Exclusions Rule stated because there will continue to be section 7 consultations for discretionary actions in areas where the spotted owl occurs, we have concluded that the additional regulatory requirement related to review for adverse modification is outweighed by other relevant factors. See our response to *Comment (3)* concerning section 7 consultations and our reconsideration of the weighing of the benefits of inclusion versus the benefits of excluding these lands and our extinction analysis in Consideration of Impacts Under Section 4(b)(2) of the Act.

Economic Analysis Comments

Comments From Counties

Comment (20): Several counties requested that the Service undertake a new economic analysis to reconsider the economic impacts of the 2012 designation on local communities and natural resource-based economies.

Our response: We reviewed the FEA (IEc 2012) conducted for the December 4, 2012, critical habitat designation (77 FR 71876) as well as additional information submitted during the public comment period. We also conferred with the economists who prepared the FEA regarding the additional information submitted (IEc 2020). See our response to *Comment (21)* below for further detail. In general, we found that the commenters disagree with the Service's incremental methodology used to analyze the economic effects of the critical habitat designation for northern spotted owl, although that approach was the Service's policy at the time and has since been codified in its regulations; see 50 CFR 424.19(b)). In addition, because the January Exclusions Rule has not gone into effect and we are only excluding (*i.e.,* removing) additional areas from critical habitat, the economic impact will be further reduced from that analyzed in 2012 and a new economic analysis is not necessary. Even if the January Exclusions Rule were to go into effect, an entirely new economic analysis would not be required for this final rule because (1) this rule does not designate any new areas that were not included in the 2012 critical habitat designation and analyzed in the 2012 FEA; (2) the 2012 FEA estimated potential incremental economic impacts of the 2012 designation over a 20-year timeframe, which has not yet ended as of the date of this final rule; and (3) the Service has considered the updated economic-impact information provided by commenters, as discussed more fully below. The Service has fully considered the economic impacts of this final rule, consistent with the requirements of ESA Section 4(b)(2).

The January Exclusions Rule stated that our FEA completed in 2012 (IEc 2012) in combination with a new report prepared by the Brattle Group (2020) (Brattle Report) continue to be the best scientific and commercial data available; we no longer find this to be the case as discussed in our response to *Comment (21)* addressing IEc's review of and our concerns with information contained in the Brattle Report (IEc 2020, IEc 2021).

Comment (21): The AFRC (AFRC 2020; AFRC 2021) provided public comments requesting that the Service exclude at least 2,515,491 additional acres (1,017,983 hectares) in addition to the 204,653 acres (82,820 hectares) proposed for exclusion. The AFRC provided the Brattle Report critiquing our FEA and a supplement to the Brattle Report (Brattle supplement) responding to our responses to comments in the January Exclusions Rule (The Brattle Group 2021). The Brattle Report included updated estimates of the economic impacts of the 2012 rule using more recent data and/or different assumptions. The Oregon Farm Bureau and Oregon Cattlemen's Association; California Farm Bureau Federation; Lewis, Skamania, and Klickitat Counties in Washington; and Douglas County in Oregon also cited the Brattle Report and/or supplement in their comment letters as justification for additional exclusions. We summarize AFRC and other comments pertaining to economic analysis issues in the following:

(a) A focus of the Brattle Report and supplement (referred to as reports here) is a review of our analysis of potential timber harvest losses attributable to northern spotted owl critical habitat designation in 2012. The Brattle reports follow the same analytic approach for measuring timber harvest impacts as employed in the economic analysis for the critical habitat designation (IEc 2012), but use alternative assumptions or updated inputs. These adjustments yield the following differences when compared to the results of the FEA (see IEc 2020 for more details):

- The number of acres where incremental harvest impacts may occur is higher;
- The baseline annual harvest potential is higher;
- The potential reductions in harvest volumes due to the impact of critical habitat are larger; and
- The estimated stumpage values are lower.

As described by IEc in their review of this information (IEc 2020, 2021), the effect of these changes in inputs by the Brattle reports is a higher measure of the negative annualized timber harvest impacts across the affected acres, *i.e.,* a projection of greater economic effects. The Brattle reports assert that, across 1.7 million acres (687,966 hectares), the critical habitat designation greatly diminishes harvest and causes losses to the market of between $66.4 million and $77.2 million (or between $66.4 million and $85.4 million per the supplement) on an annualized basis, and between $753 million and $1.18 billion (or between $869 million and $1.31 billion per the supplement) over 20 years on a net present value (NPV) basis. AFRC and others suggest the results of the

Brattle reports support their request for exclusion of additional acres based on economic impacts.

Our response: We find several issues with the analysis provided in the Brattle reports, specifically the assumptions or data used to produce the estimate of negative annualized timber harvest impacts due to the critical habitat designation, and we do not agree with their ultimate conclusions.

First, the Brattle reports state that the higher number of acres where incremental impacts may occur is based upon a review of GIS files and other related information. Their estimated acreage of lands affected changed considerably between the Brattle Report and supplement. However, the supplement provides no clear basis for this increase. We asked IEc to review the Brattle reports, and they concluded that they could not replicate the result, but determined that the magnitude of differences in the acreages identified in the reports versus those identified in our FEA are unlikely to substantially alter the ranking of potential impacts by subunit. The Brattle reports provide retrospective impacts by subunit, but do not provide a composite ranking. In contrast, our FEA included an analysis of acreages by subunit where impacts may occur, scored these areas by the potential extent of impact, and then ranked each subunit according to a composite score against all other subunits (see Section 4.3 of IEc 2012).

Second, the Brattle reports assume a much higher baseline annual harvest potential on USFS and BLM lands (a more than five-fold increase) than the best available information indicates is likely. We understand that the reports relied on average yields from a short time period of harvest data (2018–2020) on lands managed by BLM for moist and dry forests and then translated these harvest levels into estimates of long-term annual yields across the acres where the reports assume incremental impacts may occur. Based on comments from AFRC, the reports also assume similar yields on BLM and USFS lands, a standard rotation age of 100 years where one percent of the land would be regeneration-harvested, and one percent would be thinned. The assumptions are at best hypothetical and not widely applicable. The BLM and USFS are unlikely to have similar yields generally for a variety of reasons, including that there is no standard of a 100-year rotation age or one percent regeneration harvest used by either agency for all of their managed lands. The USFS and BLM apply ''uneven-aged'' stand management, rather than ''even-aged'' stand rotations, on many of these areas to meet multiple use goals such as wildfire risk reduction, recreation, forest restoration, and biodiversity conservation, especially in drier portions of the range. In contrast, we based our yield rates on actual harvest data provided by the BLM and USFS over an extended period (IEc 2012). For lands managed by BLM, the FEA used data BLM provided on 30 years of planned timber harvest by land allocation type (reserve/matrix), forest conditions (nesting/roosting habitat, predominantly younger forests), and harvest type (thinning, regeneration) at the critical habitat subunit level. For lands managed by USFS, our FEA used projected yield rates provided by the USFS for each critical habitat unit.

Third, the Brattle reports assume an 80 percent reduction in harvest volumes due to the critical habitat designation versus the 20 percent used in the FEA high-impact scenario. The reports indicate that the assumption of an 80 percent reduction in harvest volumes is based on discussions with AFRC and unspecified comments provided by the USFS and BLM on the 2012 economic analysis. As a result, it is unclear on what basis the Brattle reports assume an 80 percent reduction in harvest volumes. The most likely cause is by improperly conflating the impact that the listing of the northern spotted owl in 1990 and other economic and logistical factors had on timber harvest with the incremental effect of the subsequent designation of critical habitat, particularly in areas that are currently unoccupied by the subspecies.

The Brattle Report also noted that it ''cannot model the timber markets that influence the demand for timber in the Pacific Northwest'' to test the reasonableness of its assumption concerning timber harvest effects (The Brattle Group 2020, p. 17). The potential incremental effect of critical habitat on harvest levels was a point of significant debate for the 2012 critical habitat designation (see section 4.4.2 of the FEA). As IEc notes in its assessment of the Brattle Report, ''Various land managers, Service experts, and other commenters concluded that the direction and magnitude of effect due to critical habitat was uncertain, noting that harvest levels could be higher or lower depending on a variety of land management considerations and harvest factors. In addition, the implementation of timber harvest in critical habitat occurs within a complex set of factors, including volatility in global demand for wood products, general timber industry transformation, and existing regulatory and statutory requirements, among other factors.'' The FEA used three separate scenarios, along with additional sensitivity analysis to capture this uncertainty and the concerns of multiple stakeholders, including BLM and USFS. ''The Brattle report does not endeavor to model markets or other factors that influence the demand for timber in the Pacific Northwest'' (IEc 2020). The Brattle Report did not include a sensitivity analysis to address the uncertainty of effects associated with critical habitat.

Fourth, concerning estimated stumpage values, as IEc noted in their review, our FEA ''recognized that prices vary across forest, land manager, and year, and that future prices were uncertain. The analysis captured annual average prices from Federal timber sales on BLM and USFS managed lands between 2000 and 2011. The low-end price ($100 per thousand board feet (mbf)) was similar to more recent prices (as of 2012) from Federal timber sales, which had been below historical averages. The higher end was selected to purposely capture the highest price received since the year 2000. This high price, therefore, served as a conservative approach, meaning it would yield the highest negative impacts from any constraints on timber harvest volumes due to critical habitat designation. Beyond this range, the 2012 economic analysis conducted a further sensitivity analysis based upon a comment received from AFRC. In this scenario, an even higher price of $350 per mbf was analyzed for its effect and included in the economic analysis. Thus, the original range and further sensitivity analysis captured a reasonable upper and lower bound of the role of timber prices on potential impacts. In contrast, the Brattle report uses similar average stumpage prices from similar sources, but only from 2018 to 2020, a much shorter time frame. In addition, its price range of $83 to $191 per mbf is consistent with the price range used in the 2012 report, especially when considering the passage of eight years and the general market volatility of lumber prices.'' (IEc 2020).

In sum, the Brattle reports and associated commenters concluded that the total effect of these alternative inputs is a higher measure of negative annualized timber harvest impacts across the total of potentially affected acres compared to what was estimated in the FEA (IEc 2012) ($66 to $77 million estimated in the Brattle Report, $66 to $85 million in the supplement, versus $6.5 million in the FEA). As noted above, the Brattle supplement added the distribution of its overall measure of impacts across the designation's subunits. Understanding

relative impacts by discrete areas of critical habitat is a necessary aspect of an accurate benefits-weighing process. We note that the Brattle reports include additional conclusions, such as effects on Gross Domestic Product and employment. However, these conclusions are based on the assumptions we discuss above, which are misapplied or cannot be confirmed with the methods provided. Therefore, for the reasons discussed above, we do not consider the Brattle reports to be the best scientific and commercial data available, and we do not agree with the conclusions of the Brattle reports and the comments that rely on them. More specific analysis of the Brattle reports can be found in our record on this rulemaking (IEc 2020, 2021).

The January Exclusions Rule considered the negative economic impacts on rural communities of the critical habitat designation and the listing of the northern spotted owl in its weighing of the benefits of excluding 3.4 million acres against the benefits of inclusion and concluded that the benefits of exclusion outweighed the benefits of inclusion. We do not now find these conclusions to be appropriate; see our reconsideration of the weighing of the benefits of inclusion versus the benefits of excluding these lands and our extinction analysis in Consideration of Impacts under Section 4(b)(2) of the Act.

(b) The Brattle Report included information on annual timber harvest levels on Federal lands in 18 counties within California, Oregon, and Washington, from 2002 through 2018. The report concluded that these data demonstrate that timber harvest in these counties declined as a direct consequence of the 2012 critical habitat designation.

Our response: We acknowledge that the listing of the northern spotted owl in 1990, in addition to other social and economic factors, affected timber industry employment and establishments (Ferris and Frank 2021, p. 12). However, we have reviewed the information in the Brattle Report and found significant errors and unsubstantiated assumptions.

First, 4 of the 18 counties cited in the analysis (Calaveras, Riverside, and Mono in California, and Morrow in Oregon) are located outside of the range of the northern spotted owl and do not contain designated northern spotted owl critical habitat, so the designation would not have impacted timber harvest in these counties. The Brattle supplement states that this information was provided for context, although it does not explain how referencing this context aids in assessment of impacts from the northern spotted owl. In fact, the data from these counties document that timber harvest and related economic patterns were concurrently volatile in rural counties outside the range of the spotted owl, suggesting larger market forces were impacting timber markets both within and outside the range of the owl.

Second, of the remaining 14 counties cited in the report that contain some spotted owl critical habitat, the Brattle reports describe timber harvest declines occurring in 7 counties somewhere around (*i.e.,* proximally before and after) the year 2012, stable or flat trends in 3 counties, and increased harvest levels in 4 counties. Of the declines highlighted by the commenter, several began prior to the designation in December 2012, casting doubt on the potential direct impact of the 2012 designation. Almost all of these counties also show large fluctuations in harvest levels between years going back to 2002, indicating that there are likely other confounding economic and logistical factors influencing these dynamic timber harvest levels aside from the 2012 critical habitat designation, as described in our response to *Comment (22).*

Third, the analysis provided charts of harvest decline in specific counties within the critical habitat designation. A rapid assessment of the same data source cited by the commenter, but evaluating a random number of additional counties in Oregon, Washington, and California in the range of the northern spotted owl, revealed no discernible pattern in timber harvest declines that could reasonably be attributed to the 2012 critical habitat designation. Some counties experienced general increases in timber harvest after 2012, some declined, and some were relatively flat when compared to long-term trends. A similar pattern of fluctuation exists for individual counties located outside of the range of the spotted owl but within Oregon, Washington, and California, as well as in other western States. Most of these counties showed wide fluctuations in timber harvested on Federal lands, both before and after 2012, again indicating the influence of factors other than the designation of critical habitat.

Using the same data source cited by this commenter (with 2019 data from BLM and USFS on timber volume offered for sale), we reviewed Federal land harvest data in Oregon counties that are within the northern spotted owl critical habitat designation. The annual average harvest from 2002 through 2012 on all BLM lands in the range of the spotted owl was approximately 159 million board feet per year prior to the 2012 critical habitat designation. The annual average harvest on BLM lands located in the range of the spotted owl from 2013 through 2019, after the 2012 critical rule was published, was 235 million board feet; the total in 2020 was 249 million board feet offered for sale (BLM 2021a). Thus, rather than suffering a decline, annual harvest appears to have increased substantially subsequent to the 2012 designation of critical habitat.

Likewise, the annual average harvest from 2002 through 2012 on USFS lands located within the range of the spotted owl was approximately 196 million board feet per year prior to the 2012 critical habitat designation. The annual average harvest on USFS land from 2013 through 2019, after the 2012 critical rule was published, was 288 million board feet. We also reviewed Federal harvest data in Oregon counties outside the range of the spotted owl (and therefore in counties with no spotted owl critical habitat or obligation for Federal agencies to consult under ESA section 7) and saw harvest volume fluctuations similar to those in counties located within critical habitat. Based on these data it does not appear that designation of critical habitat in 2012 had a significant incremental depressive effect on subsequent Federal timber harvest.

Comment (22): Douglas County requested that the Service exclude all land within Douglas County from the critical habitat designation due to severe and disproportionate economic impacts. The County provided a 2007 report that discusses the negative economic impacts of reduced harvest on Federal lands. Additionally, Douglas County asserted that our FEA is flawed with respect to Douglas County and should be revised. Among other exclusions that are addressed in *Comments (25–28),* Douglas County requested that all private and State lands, and county lands specifically in Oregon, be excluded.

Our response: The report provided by Douglas County focuses on the impact that termination of ''safety net'' payments under the Secure Rural Schools and Community Self-Determination Act would have on counties in western Oregon. The report discusses reductions in harvest on Federal lands in the O&C counties attributable to a range of factors, resulting in a loss of revenue sharing that limited county budgets and rapid contractions of the wood products sector as logging declined and mills closed or reduced shifts. The report, prepared in 2007, does not discuss impacts of the critical habitat

designation but describes general pressures on the timber industry.

In addition, during this same time period, timber-related tax revenue flowing to Oregon counties has declined due to large reductions in State and local property and severance taxes on private timber lands. According to one in-depth analysis, half of Oregon's 18 western counties lost more revenue due to tax cuts on private lands than they did due to reductions in Federal timber harvest levels (Younes and Schick 2020). It is unclear if the Brattle analysis incorporated this data into its analysis of net declines in timber revenue to local economies.

Our FEA (IEc 2012) addressed the incremental effects of critical habitat within the area proposed for designation for the northern spotted owl. Consistent with our practice at the time (now codified in regulations) the FEA quantifies the economic impacts that may be directly attributable to the designation of critical habitat, comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' Our incremental analysis did not consider the economic impact of changes other than from the proposed revised critical habitat designation, and did not evaluate the economic condition or status of the timber industry at large. Rather, it addressed the effects related to the impacts to Federal agencies and their activities, because Federal agencies are the only entities directly subject to the requirement to evaluate and consider effects of their actions on designated critical habitat.

Nonetheless, we acknowledged that, ''[m]ultiple forces have contributed to the recent changes in the Pacific Northwest timber industry. In general, the timber industry is characterized as being highly competitive; there is a relatively low degree of concentration of production among the largest producers and there is essentially a single national price for commodity grades of lumber. In recent decades, competition has intensified with increased harvesting in the U.S. South and interior Canadian Provinces. New technologies and increased mechanization have led to mill closures; generally, less efficient mills located near Federal forests have been closed in favor of larger, more advanced facilities closer to major transportation corridors or private timberlands. In addition, other forces such as endangered species protections, fluctuations in domestic consumption, shifts in international trade, and changes in timberland ownership, have all contributed to changes in the Pacific Northwest timber industry'' (IEc 2012, p. 3–17).

We acknowledge that Douglas County has experienced significant economic strain, but we conclude that the economic impacts analysis we conducted with the 2012 critical habitat designation remains an accurate assessment of the incremental economic effects of the designation of critical habitat, and does not provide a basis from which to exclude all of the areas of critical habitat currently designated in the county.

Regarding Douglas County's request that we exclude private, State, and county lands, there are no private lands designated as critical habitat for the northern spotted owl; we primarily relied on Federal lands, with a small amount of State and local government lands, to meet the conservation needs of the northern spotted owl. We did not designate any county lands in Oregon as critical habitat. We did designate areas on some State lands in Washington, Oregon, and California where Federal lands are not sufficient to meet the conservation needs of the northern spotted owl. In our final 2012 designation, we excluded State parks and natural areas and lands in Washington covered by a habitat conservation plan. See our *Process for Exercising Discretion to Conduct an Exclusion Analysis* in Consideration of Impacts Under Section 4(b)(2) of the Act.

Comment (23): One commenter noted that a 2012 economic analysis from the Sierra Institute, ''Response to the Economic Analysis of Critical Habitat Designation for the Northern Spotted Owl by Industrial Economics'' (Kusel and Saah 2012), was not fully considered in the 2012 designation and that a new economic analysis should be conducted.

Our response: The Service fully considered the content of the Kusel and Saah report and found a great deal of overlap between that economic analysis and the FEA contracted by the Service and written by Industrial Economics (IEc 2012), even incorporating a summary of the Kusel and Saah report (2012) (see our response to *Comment (201)* in the December 4, 2012, critical habitat rule (77 FR 71876, p. 72040)). The Service maintains that the FEA conducted for the 2012 critical habitat designation (IEc 2012) is the most accurate reflection of the potential economic impacts of that designation (77 FR 71876). We have reviewed the FEA (IEc 2012) and determined that because we are proposing only to exclude (*i.e.,* remove) additional areas from critical habitat and are not adding any new areas not included in the 2012 designation, the economic impact will be further reduced and a new analysis is not necessary.

Environmental Analysis Comments

Comment (24): Commenters expressed that the Service must conduct a NEPA analysis and evaluate the exclusions in a biological opinion before finalizing exclusions.

Our response: It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit (see *Catron County Board of Commissioners, New Mexico* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996)), we do not need to prepare environmental analyses pursuant to 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 in *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995).

Other than a small amount of Indian lands (which were previously managed by the BLM), the Service is only excluding lands identified for timber harvest under the 2016 BLM RMPs. These RMPs underwent rigorous NEPA review, including public comment on the identification of the Harvest Land Base lands. The Service then completed a Biological Opinion on these RMPs, which included an analysis of the effects of proposed timber harvest in designated critical habitat, and concluded that timber harvest under the plan would not adversely modify the critical habitat. Therefore, consistent with the ruling in *Douglas County,* conducting a NEPA analysis and a biological opinion on the proposed exclusions would be redundant, and an inefficient use of limited government resources. As we are withdrawing the exclusions finalized in the January Exclusion Rule, we make no assessment of whether or not a NEPA analysis and biological opinion on those exclusions would have been required.

4(b)(2) Exclusions Comments

The Secretary has discretion whether to conduct an exclusion analysis under section 4(b)(2) in accordance with our regulations at 50 CFR 17.90(c). The Secretary will conduct an exclusion analysis when the proponent of excluding a particular area (including but not limited to permittees, lessees or others with a permit, lease, or contract on federally managed lands) has presented credible information regarding the existence of a meaningful economic or other relevant impact

supporting a benefit of exclusion for that particular area. We provide our evaluation of whether commenters requesting the exclusions below have provided this credible information in Consideration of Impacts Under Section 4(b)(2) of the Act under the section entitled *Process for Exercising Discretion to Conduct an Exclusion Analysis.*

Comment (25): Commenters variously requested that we exclude all O&C lands; all USFS matrix lands; all USFS and BLM lands; BLM lands outside the Harvest Land Base; and specifically, all Douglas County lands.

We respond separately to each reason provided for these suggested exclusion requests first (except for assertions of economic impacts, which are addressed above in response to *Comments (20–23)),* and then provide a collective summary:

(a) Commenters asserted that critical habitat conflicts with BLM and USFS management direction and constrains timber harvest, including salvage harvest, on O&C lands and matrix lands.

Our response: We determined in our section 7 consultation on the BLM RMPs that BLM's management direction was consistent with the Endangered Species Act and that the actions proposed within the plans, including timber harvest in the Harvest Land Base on O&C lands over a 50-year timeframe, did not result in adverse modification of the designated critical habitat. Similarly, our consultations under section 7 with the USFS for its harvest actions carried out under the NWFP on matrix and O&C lands since the 2012 designation of critical habitat have resulted in determinations that the actions did not adversely modify critical habitat or jeopardize the continued existence of the northern spotted owl. Thus, these agencies have not been precluded from implementing timber harvests within designated critical habitat; they can and do implement harvest actions within critical habitat consistent with their management plans. As described in previous responses to comments, average annual timber harvest on these lands has actually increased after the 2012 designation. Additionally, as an example, in response to the 2020 wildfire season, we recently consulted on salvage harvest projects in critical habitat in the areas of the Archie Creek and South Obenchain wildfires to allow the BLM and the USFS to recover the economic value of trees proposed for removal. Critical habitat did not impede these projects from going forward nor did it require additional project changes to the actions the agencies proposed.

(b) There are conflicting principles between the O&C Act and the Endangered Species Act, and the Service should consider the pending court remedy on O&C lands. One commenter suggested that we wait for the outcome of that proceeding before revising critical habitat; another commenter indicated the court ruling, even without the remedy order, supported the exclusion of all O&C lands from designated critical habitat.

Our response: We note that there is ongoing litigation challenging BLM's management of O&C lands under the 2016 RMPs (BLM 2016a, 2016b). As we described in the proposed rule, one district court has upheld the RMPs in challenges asserting non-compliance with the Endangered Species Act, a conclusion affirmed by an appellate court (see *Pac. Rivers* v. *U.S. Bureau of Land Mgmt.,* No. 6:16-cv-01598- JR, 2019 WL 1232835 (D. Or. Mar. 15, 2019), *aff'd sub nom. Pac. Rivers* v. *Bureau of Land Mgmt.,* 815 F. App'x 107 (9th Cir. 2020). In a separate proceeding a district judge on the U.S. District Court for the District of Columbia found that the BLM RMPs violate the O&C Act because BLM excluded portions of O&C timberland from sustained yield harvest (*i.e.,* the BLM allocated some timberlands to reserves instead of the Harvest Land Base); *see, American Forest Resource Council et al.* v. *Hammond,* 422 F.Supp.3d 184 (D.D.C. 2019). The parties briefed the court on the appropriate remedy, but the court has not yet issued an order. We considered this information in developing the proposed rule, and sought comment specifically on how we should address this information in the rule.

This final rule is based on the 2016 RMPs as they are, and not as they may be modified in the future. The ultimate litigation outcome challenging the BLM's management of O&C lands is not certain. We acknowledge the potential for future reductions in the BLM reserve land-use allocations and changes in the Harvest Land Base. We will continue to monitor the litigation and once it has concluded (including any land-use planning if undertaken) will assess whether revisions to this designation are appropriate to propose. See also our response to *Comment (6).*

(c) Commenters asserted that O&C lands managed by the BLM and lands managed by the USFS should be excluded because the NWFP and RMPs should guide management on Federal lands since they are consistent with the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011).

Our response: The Service agrees the NWFP and RMPs guide management on Federal lands, as informed by other plans, laws, designations and input. Federal land managers are skilled at incorporating a wide variety of required inputs and feedback when planning and carrying out land management actions, including public comment under the National Environmental Policy Act, recommendations from listed species' recovery plans, input from the Service and National Marine Fisheries Service through the section 7 consultation process, growth and yield models, and critical habitat designations, to name just a few. The BLM RMPs have undergone section 7 consultation recently, in 2016, with the 2012 spotted owl critical habitat rule in place and were found to be consistent with the Endangered Species Act, including our determination that the management direction of the plans is consistent with the critical habitat designation.

In contrast, we have not conducted an updated programmatic review of USFS land management plans as was done with BLM plans in 2016. All USFS actions carried out under the NWFP since the 2012 designation of critical habitat that may affect that habitat have undergone section 7 consultation on a project-by-project basis and have been found to be consistent with the Endangered Species Act. Our January Exclusions Rule comment response stated that these consultations were sufficient to support exclusion of the USFS land areas because it supported the then-Secretary's determination that extinction would not result. However, without a programmatic-scale look at USFS land management plans we lack the updated broad-scale information and assessment of the effects of harvest within designated critical habitat that would be necessary to sustain additional exclusions of all USFS O&C lands, whether they are located in reserves or in areas targeted for timber harvest. See our response to *Comment (11)* concerning the remaining O&C lands in the final critical habitat designation. See also our reconsideration of the weighing of the benefits of inclusion versus the benefits of excluding these lands and our extinction analysis in Consideration of Impacts Under Section 4(b)(2) of the Act.

(d) Commenters stated that non-O&C BLM lands should be excluded for ease of administration.

Our response: We are excluding lands within the BLM Harvest Land Base and certain Indian lands in this rulemaking, including some non-O&C lands managed by BLM. Over 90 percent of

the Harvest Land Base occurs on O&C lands, but we also included the portion of the Harvest Land Base that does not occur on O&C lands in this exclusion. See responses to *Comments (11)* and *(16)* for an explanation of why additional lands managed by BLM are essential to the conservation of the northern spotted owl and are thus not being excluded.

(e): Commenters stated that our reliance on the management under the BLM RMPs (BLM 2016a, 2016b) as a rationale for excluding the Harvest Land Base in those plans should also be applied to considering all O&C lands addressed in those plans, and that we should also rely on a similar rationale for excluding O&C lands and matrix lands managed by the USFS under the protections of the NWFP for exclusions.

Our response: See our response to *Comment (25c)* above. Additionally, we acknowledge the continuing concern over the inclusion of O&C lands in the designation of critical habitat for the northern spotted owl. Since the mid-1970s, scientists and land managers have recognized the importance of forests located on portions of O&C lands for the conservation of the northern spotted owl and have attempted to reconcile this conservation need with other land uses (Thomas *et al.* 1990, entire). Starting in 1977, BLM worked closely with scientists and other State and Federal agencies to implement northern spotted owl conservation measures on O&C lands. Over the ensuing decades, the northern spotted owl was listed as a threatened species under the Act, critical habitat was designated (57 FR 1796, January 15, 1992) and revised two times (73 FR 47326, August 13, 2008; 77 FR 71876, December 4, 2012) on portions of the O&C lands, and a Recovery Plan for the owl was completed (73 FR 29471, May 21, 2008, p. 29472) and revised (76 FR 38575, July 1, 2011). These and other scientific reviews consistently recognized the need for large portions of the O&C forest to be managed for northern spotted owl conservation while also providing for other uses of these lands.

In 2016, the BLM revised their RMPs providing direction for the management of approximately 2.5 million acres (1 million hectares) of BLM-administered lands, which includes most of the O&C lands, for the purposes of producing a sustained yield of timber, contributing to the recovery of endangered and threatened species, providing clean water, restoring fire-adapted ecosystems, and providing for recreation opportunities (BLM 2016a, p. 20; BLM 2016b, p. 20). The BLM RMPs revised the land-use allocations of BLM-managed lands in western Oregon. We noted in the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011, p. II–3) that the functionality of the critical habitat designation on BLM-managed lands and rangewide was anticipated to improve, in part as the land management agencies updated their land management plans to incorporate the Recovery Plan's recommendations.

The total Harvest Land Base land use allocation on BLM lands, a portion of which is critical habitat and is now being excluded from critical habitat, comprises 19 percent (469,215 acres (189,884 hectares)) of the overall land use allocations described in the RMPs and is where the majority of programmed timber harvest will occur (FWS 2016, p. 9; BLM 2016a, pp. 59–63). Approximately 172,712 acres (69,779 hectares) of the Harvest Land Base being excluded herein is O&C lands. Our analysis of the impacts to the habitat within the Harvest Land Base recognized that this land use allocation was not intended to be relied upon for demographic support of northern spotted owls (FWS 2016, p. 553). Thus, through our analysis conducted for the section 7 consultation for the 2016 RMPs, we have evaluated the role that these lands have in the recovery of the northern spotted owl. Based on that, we reconsidered the relative value of including them in a critical habitat designation.

The O&C lands that remain within the critical habitat designation with this final rule are composed primarily of Late-Successional Reserve on BLM and USFS lands, and some forest ''matrix'' lands in National Forests where timber harvest was programmed to occur under the 1994 NWFP. Our modeling results for the 2012 critical habitat designation indicated that the O&C lands make a significant contribution toward meeting the conservation objectives for the northern spotted owl. As described in the section, Changes From the Proposed Rule, in the December 4, 2012, critical habitat rule (77 FR 71876; p. 71888), we tested possible habitat networks without many of the BLM (now Harvest Land Base) and USFS matrix lands, which resulted in a significant increase in the risk of extinction for the northern spotted owl (Dunk *et al.* 2012, pp. 57–59; Dunk *et al.* 2019, Figure 8). Likewise, in addition to our modeling results, peer review of both the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) as well as our proposed rule to revise critical habitat in 2012 indicated that retention of high-quality habitat in portions of the matrix is essential for the conservation of the subspecies. Thus, while the exclusion of the Harvest Land Base acreage as described will not jeopardize the subspecies (as assessed in our Biological Opinion on the 2016 RMPs), the O&C lands and USFS matrix lands that remain within the designation remain essential to the conservation of the northern spotted owl.

Comment (26): Commenters requested that we exclude: Areas of younger forests; all critical habitat subunits that have 50 percent or more younger forests; areas that are not currently occupied by northern spotted owls; all unoccupied areas; unoccupied USFS matrix and adaptive management area lands; ''habitat capable'' lands; stands under 80 years old; and low-quality habitat; and areas described as dispersal habitat. We respond separately to these exclusion requests below:

(a) Commenters asserted that younger forests, including stands under 80 years old, areas that are not currently occupied by northern spotted owls, and ''habitat capable'' lands do not currently provide habitat to the northern spotted owl. Commenters assert that an area is not habitat if modification or natural growth is required before it could actually support the subspecies. Comments stated that areas of younger forests and subunits dominated (greater than 50 percent) by younger forests should be excluded and that the benefits of including these areas is negligible. Some commenters provided a report and data showing areas within the critical habitat designation that had been harvested, experienced severe wildfire (see our response to *Comment 27*), or are smaller fragmented parcels (see our response to *Comment 28*) (Mason, Bruce and Girard 2021 in AFRC 2021, appendices A–D). Commenters stated that even with these exclusions there would still be protections for the subspecies due to section 7 obligations.

Our response: Younger forests are typically the result of past timber harvest, wildfire, or some other form of disturbance. Areas of younger forest in the critical habitat designation are part of the forest mosaic essential for the northern spotted owl. The fact that some younger forests may contain few habitat characteristics preferred by owls does not mean that such areas are not habitat for the owl—some areas may be, others may not be, depending on the site-specific characteristics. Nor does the Act preclude designation of areas that currently function as habitat for the northern spotted owl but are dynamic, such as a forested environment in which younger trees naturally grow over time and the area thereby transitions from

functioning primarily as dispersal or foraging habitat to the subspecies' preferred roosting and nesting habitat consisting of older stands. The Service's rule does not describe or anticipate modifications or natural changes to the designated areas for them to qualify as critical habitat or represent current habitat for the subspecies; indeed, the regulation explicitly indicates that ''[n]othing in this rule requires land managers to implement, or precludes land managers from implementing, special management or protection measures.'' 50 CFR 17.95 (entry for northern spotted owl at paragraph 4).

As to ''occupied'' versus ''unoccupied'' habitat, the commenter may be confusing the use of the term ''occupied'' as used when designating critical habitat, with the concepts of presence or absence of a species in section 7 consultations, which can also refer to the ''occupancy'' of the species at the time of the consultation. The two are not the same. The Service is required to designate critical habitat based on the occupied habitat ''at the time of listing'' which in the case of the northern spotted owl was 1990. After 1990, whether or not the species ''occupies'' that specific habitat does not dictate whether the area is critical habitat. Rather, in our evaluation in a section 7 consultation for effects of a Federal action on specific designated critical habitat, we evaluate the effects to the physical and biological features of critical habitat and the post-project functionality of the network to provide for connectivity at the subunit, unit, and designation scales to ensure the landscape continues to support the habitat network locally, regionally, and across the designation. This evaluation is not conditional on critical habitat being currently occupied. Rather, ''occupancy'' at the time of a specific action resulting in a section 7 consultation is generally most relevant for assessing whether the proposed Federal action will ''jeopardize'' the species, or incidentally ''take'' the species. See also our response to *Comment (3).*

As was explained in the 2012 critical habitat designation, although some areas of younger forests may not have been used as nesting habitat by northern spotted owls at the time of listing, younger forests are often used by owls for dispersal or foraging behavior, both of which are essential life functions, and thus are considered as ''occupied'' for the purposes of critical habitat designation. Including these areas within the designation is beneficial because they provide the physical and biological features that currently support owl life functions (*e.g.,* dispersal) and contain the habitat elements conducive to developing the physical or biological features of the higher-quality nesting and roosting habitat (they are of suitable elevation, climate, and forest community type over time). While some areas may not be used for nesting by spotted owls and may be lacking some element of the physical or biological features, such as large trees or dense canopies that are associated with the higher quality nesting habitat, these areas contain the dispersal and foraging habitat to support movement between adjacent subunits and are therefore essential to provide population connectivity for the northern spotted owl. In addition, northern spotted owls are regularly reproductively successful in home ranges that comprise a mosaic of habitat, including older and younger forest. Northern spotted owls have in fact been found occupying lower quality habitat consisting of younger forested stands, particularly when higher quality habitat is not available in the area (Glenn *et al.* 2004). The critical habitat designation included younger forests that are in proximity to older forests to contribute to northern spotted owl occupancy and reproduction.

In response to ''habitat capable'' lands, see our response to *Comment (29c)* below. In response to continuing section 7 obligations, see our response to *Comment (3).*

(b) Commenters stated that the description of dispersal habitat is unclear and that the Recovery Plan for the Northern Spotted Owl (FWS 2011) states that dispersal needs have not been thoroughly evaluated and therefore dispersal habitat is not determinable. Commenters further stated that habitat that does not meet a minimum threshold of 11 inches (in) (28 centimeters) (cm) diameter at breast height (dbh) does not meet the definition of dispersal habitat.

Our response: There are sufficient data and scientific information to include dispersal habitat as a habitat type for northern spotted owl critical habitat. Ideally, dispersal habitat consists of higher-quality nesting, roosting, and foraging habitat, but in cases where the landscape does not support those habitat types, spotted owls will disperse through younger habitat as described in the 2012 critical habitat rule (FWS 2012, p. 71907). The Service focused on defining the lower limit for forest stands that support the transient phase of northern spotted owl dispersal as stands ''with adequate tree size and canopy closure to provide protection from avian predators and minimal foraging opportunities'' (FWS 2011, p. A–8). Corridors that contain these minimum characteristics for dispersal habitat, such as forested corridors through fragmented landscapes, serve primarily to support relatively rapid movement through such areas, rather than colonization (FWS 2012, p. 71901). In general, these areas contain trees with at least, but not limited to, 11 in (28 cm) dbh and a minimum 40 percent canopy cover. For instance, northern spotted owls will also disperse though non-forested areas, such as clearcuts, although they use them less than expected based on availability (Miller *et al.* 1997, p. 145).

The risk of dispersing through a landscape of minimum or lower quality dispersal habitat is not well understood. Buchanan (2004, p. 1341) evaluated this risk, concluding that ''strategies for management of spotted owl dispersal habitat may not produce conditions preferred by spotted owls and may result in dispersal-related mortality (due to starvation or predation) or other consequences that negatively influence juvenile recruitment.'' The relative effect to spotted owls dispersing though a lower-quality stand and landscape is the issue that has not been ''thoroughly evaluated or described'' (FWS 2011, p. vi), as opposed to the value of dispersal habitat generally for northern spotted owls. Mortality rates of juvenile dispersal exceed 70 percent in some studies, with known or suspected causes of mortality during dispersal including starvation, predation, and accidents (FWS 2011, p. A–7).

In addition to assisting with dispersal in support of northern spotted owl life functions, young stands also assist in addressing the long-term viability and recovery of the owl. Habitat loss and degradation were identified as major threats to the northern spotted owl at the time of listing, and conservation and recovery of the subspecies are dependent in part on the development of currently low-quality habitat into high-quality habitat to allow for population growth and recovery (77 FR 71876; p. 71917). Younger forests that meet the dispersal characteristics described in the 2012 designation provide for this environment as the stands age and develop the complex structural components of that higher quality habitat. To summarize, there is a clear biological need for young forests to contribute to spotted owl recovery both as dispersal habitat and as future breeding habitat to support population growth and recovery. Ideally, dispersal habitat consists of a large percentage of older habitat on the landscape, but younger stands also support movement

and are necessary where older habitat is lacking. Additionally, dispersal habitat is a biological need of the subspecies due to the need for successional development to supply additional older, higher-quality habitat to address past and future habitat loss within critical habitat.

Comment (27): Commenters requested that we exclude all California lands, areas of high or moderately high fire hazard risk or fire-prone forests, entire subunits in fire-prone areas, dry forest in California, dry forest in the Eastern Washington Cascades, areas that have experienced high-severity wildfire, and previously burned Late-Successional Reserve, citing the following rationale:

(a) Commenters stated that a conflict exists between critical habitat and management objectives for fuels reduction and active management, and that wildfire suppression costs are immense. They asserted that exclusion of certain lands would facilitate density management, dry forest restoration, and fuels reduction on the most vulnerable acres and prevent loss of northern spotted owl habitat.

Our response: In the 2012 critical habitat rule, the Service accounted for the drier provinces and parts of the range and recognized that forest management needs to be tailored to the forest type and climatic conditions, including the dry forests in California and the Eastern Washington Cascades. As part of the critical habitat rule, the Service expressly encouraged land managers to consider implementation of active forest management, using ''ecological forestry'' practices, to restore natural ecological processes where they have been disrupted or suppressed (*e.g.,* natural fire regimes). This flexibility is provided to reduce the potential for adverse impacts associated with commercial timber harvest when such harvest is planned within or adjacent to critical habitat and consistent with land-use plans (77 FR 71876; p. 71877).

On page 71908 of the December 4, 2012, critical habitat rule (77 FR 71876), we stated that, in drier, more fire-prone regions of the owl's range, habitat conditions will likely be more dynamic, and more active management may be required to reduce the risk to the essential physical or biological features from fire, insects, disease, and climate change, as well as to promote regeneration following disturbance.

The Service recognizes that land managers have a variety of forest management goals, including maintaining or improving ecological conditions where the intent is to provide long-term benefits to forest resiliency and restore natural forest dynamic processes (FWS 2011, III–45).

The Service has consulted under section 7 with Federal agencies on their fuels reduction, stand resiliency, and pine restoration projects in dry forest systems within the range of the northern spotted owl. For example, we have consulted with the BLM and the USFS on such actions in the Klamath Province of southern Oregon. The proposed actions may include treatment areas that reduce forest canopy to obtain desired silvicultural outcomes and meet the purpose and need of the project, including timber production. They can also promote ecological restoration and are expected to reduce future losses of spotted owl habitat and improve overall forest ecosystem resilience to climate change. We have to date concluded in these consultations that the actions do not adversely modify critical habitat. Thus, active management to reduce wildfire risk can and has been undertaken in designated critical habitat.

In the 2012 critical habitat rule, we repeatedly reference the need for and appropriateness of conducting forest health treatments in spotted owl habitat, including designated critical habitat. Likewise, the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) encourages application of active forest management within spotted owl habitat to address forest health, wildfire risk, and impacts of climate change. Lastly, the 2016 Biological Opinion on the BLM's 2016 RMPs generally supports this need as well.

In sum, there are almost always conflict and tradeoffs when conducting silvicultural projects that disturb existing forest stands. Spotted owl habitat conservation is just one of these tradeoffs; others include water quality, recreation, carbon sequestration, aesthetic values, economic opportunity, safety, and fire risk, to name a few. The 2012 critical habitat rule and other documents prepared by the Service both before and after 2012 provide support for evaluating these tradeoffs and, where appropriate, proceeding with fuels management projects within critical habitat (Henson *et al.* 2013). The commenters' assertion that critical habitat conflicts with management objectives for fuels reduction and active management is overstated; therefore, we find this rationale does not support consideration of exclusion of additional lands.

(b) Commenters requested the exclusion of burned areas to allow reforestation and fuels treatments to occur, stated that fire-dependent landscapes should be excluded because critical habitat does not benefit conservation or forest management in these areas. Commenters also stated that areas that have experienced high-severity burns no longer provide habitat for the northern spotted owl.

Our response: Northern spotted owls use previously burned areas for foraging and nesting/roosting depending on the habitat conditions post-fire (Gaines *et al.* 1997, King *et al.* 1998, Bond *et al.* 2002, Jenness *et al.* 2004; Clark 2007; Bond *et al.* 2009, Clark *et al.* 2011; Roberts *et al.* 2011; Lee *et al.* 2012; Clark *et al.* 2013; Bond *et al.* 2016; Jones *et al.* 2016; Bond *et al.* 2016; and Eyes *et al.* 2017). For example, in southwestern Oregon, spotted owls used areas that burned at all levels of burn severity, although they preferred areas that were unburned or burned at low to moderate severity (Clark 2007, pp. 111–112). Spotted owls use all burn severities and fire-created edges at different spatial scales, although the use may change over time and be dependent on proximity to existing high-quality nesting, roosting, and foraging habitat where protective cover and structural complexity were not as affected by fire.

In addition, the critical habitat rule provides the flexibility to conduct fuel treatments and reforestation activities, whose contribution to northern spotted owls will be amplified when conducted consistent with Recovery Action 12 (FWS 2011, p. III–49): ''In lands where management is focused on development of spotted owl habitat, post-fire silvicultural activities should concentrate on conserving and restoring habitat elements that take a long time to develop (*e.g.,* large trees, medium and large snags, downed wood).''

Additionally, natural disturbance processes, especially in drier regions, likely contribute to a pattern in which patches of habitat in various stages of suitability shift positions on the landscape through time. Sufficient area to provide for these habitat dynamics and to allow for the maintenance of adequate quantities of suitable habitat on the landscape at any one point in time is, therefore, essential to the conservation of the northern spotted owl. The recent loss of older habitat due to the 2020 and 2021 wildfires underscores the need for biological redundancy in the critical habitat designation to accommodate these habitat changes over time. We do not remove these areas from the designation when these changes occur, we anticipated this shift in suitability in the overall design of the critical habitat network.

Because northern spotted owls use burned areas, and because management

activities such as reforestation may still occur within designated critical habitat, we do not agree with the commenter and find there is not sufficient credible information and rationale to support consideration of exclusion of burned areas from the designation. Additionally, the conservation of the northern spotted owl relies on a forested landscape that is provided for in the critical habitat designation and the designation of these areas benefits the subspecies by ensuring that the special management considerations identified in the 2012 critical habitat rule are considered in the design and implementation of forest management actions. We recognize that some areas may decrease or increase in habitat quality over time based on disturbance events and natural growth. These habitat changes are inherent to a forest mosaic and were considered in our overall critical habitat designation.

(c) Commenters asserted that ''habitat capable'' lands do not meet the definition of critical habitat.

Our response: We did not include lands described as ''habitat capable'' in the final critical habitat designation (77 FR 71876). We did include areas that contain dispersal and foraging habitat to support movement between adjacent subunits that we determined are essential to provide population connectivity. Many of these areas are also anticipated to develop into older and more complex habitat preferred by nesting pairs in the future. We note that various agencies may refer to ''capable habitat,'' but we did not describe or designate ''capable habitat'' in the designation. We used the term ''capable'' in several portions of the 2012 designation to describe habitat areas that are already providing some function to support spotted owl life history (*e.g.,* dispersal), but that are also capable and likely to develop into higher quality habitat that northern spotted owls prefer for additional life functions, such as nesting, roosting, or foraging, over time.

Comment (28): Commenters requested that we exclude areas of less than 3,000 contiguous acres (1,214 hectares) and smaller, fragmented parcels because areas these small cannot support northern spotted owls.

Our response: Northern spotted owl home ranges (also referred to as home territories) vary in size across the range of the subspecies from about 3,000 acres (1,214 hectares) in the southern part of the range to more than 9,000 acres (3,642 hectares) in Washington. Northern spotted owl home ranges comprise forested landscapes that are generally a mix of high-quality habitat with other forest types, disturbed areas, and openings. Data from southern Oregon indicate that northern spotted owl productivity and survival is at its zenith when the home range comprises less than 100 percent mid- and late-seral forests and is mixed with some early-seral and non-forest (Olson *et al.* 2004, p. 1050), and northern spotted owls can reproduce successfully in home ranges that contain well less than 100 percent nesting and roosting habitat. This finding indicates northern spotted owl occupancy relies on a mix of forests and age classes within their home ranges.

Recovery Action 10 in the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) recommends prioritizing known and historical northern spotted owl sites for reproducing owls when the site condition includes greater than 40 percent high-quality nesting/roosting habitat in the provincial home range (*e.g.,* 1.3-mile radius) and greater than 50 percent high-quality nesting/roosting habitat within the core home range (*e.g.,* 0.5-mile radius) (FWS 2011, p. III–44). In addition, critical habitat is designed to provide for the maintenance of habitat conditions to support northern spotted owl occupancy over time, so areas that today contain less than an entire home range of contiguous high-quality habitat increasingly provide value as they develop more complex and high-quality characteristics over time. The areas of less than 3,000 contiguous acres (1,214 hectares) and smaller, fragmented parcels that are designated critical habitat are generally located in close, if not adjacent, proximity to other habitat within and outside the designation and in a spatial configuration that provides for dispersal across the landscape. Given the topographic, geologic, and microclimatic variation in these landscapes, it is normal for there to be some diversity of fragmented and heterogenous habitat conditions with these critical habitat areas. These areas also provide the redundancy built into the critical habitat designation that is necessary given the threats of wildfire and insect losses, particularly in the dry forest provinces.

In sum, these areas provide a sufficient amount of habitat to support northern spotted owl home ranges, and dispersal. Because we find that areas of less than 3,000 contiguous acres and the smaller, fragmented areas designated are able to support northern spotted owls, we are not considering excluding these areas. See also Consideration of Impacts Under Section 4(b)(2) of the Act.

Comment (29): Commenters requested that we exclude the White Pass Ski Area in Washington to avoid any ambiguity because this acreage does not function as northern spotted owl habitat.

Our response: We addressed ski areas in the December 4, 2012, rule under *Comment (186)* (77 FR 71876; p. 72035): Although ski areas are found on a very small proportion of the Federal forested lands in the Pacific Northwest, our analysis found the lands associated with some ski areas can provide essential northern spotted owl habitat to the critical habitat network. Because of the value of the habitat found around ski areas on Federal lands, impacts to northern spotted owl habitat in these areas are currently subject to the section 7 consultation process for effects to northern spotted owls. Our experience shows that ski area development actions generally tend not to conflict with northern spotted owl and critical habitat conservation needs, so we do not anticipate any significant regulatory burden associated with the continued designation of these lands as critical habitat. Removing lands managed under ski area special use permits would increase fragmentation of the critical habitat network and potentially continuous tracts of northern spotted owl habitat. Therefore, there is a greater benefit to the subspecies associated with retaining habitat located around and adjacent to ski areas in the critical habitat designation.

Additionally, as noted in the 2012 critical habitat rule (77 FR 71876; p. 72052), critical habitat does not include: (i) Humanmade structures (such as buildings, aqueducts, runways, roads, other paved areas, or surface mine sites) and the land on which they are located. We interpret this to mean that the developed portion of ski areas would fall within this exception.

The January Exclusions Rule found that the benefit of excluding the White Pass Ski Area due to economic impacts outweighed the benefit of inclusion. However, we noted in the FEA (IEc 2012, p. 1–7) completed for the 2012 critical habitat rule that ski area development actions generally tend not to conflict with spotted owl and critical habitat conservation needs, and thus, upon reconsideration, we do not anticipate any significant regulatory burden associated with the designation of these lands as critical habitat (IEc 2012). No information or evidence was presented by the commenters to indicate that the critical habitat designation does or will impair the ski area's current operations, nor that it will unreasonably restrict any future expansion of the ski area given the small footprint and potential impacts within critical habitat. In sum, developed ski areas meet the

definition of areas narratively excepted from critical habitat designation as described above; if in the future the ski area proposes to expand into critical habitat areas, we will continue to work with the USFS and the ski area to efficiently address special management considerations in the operation of the ski area.

Comment (30): Certain Tribes requested that Federal lands within 5 miles (8 kilometers) of Indian land be excluded from critical habitat due to economic impacts, the need to maintain road infrastructure to access Indian land in checkerboard ownership, and to provide greater management flexibility to maintain forest health and prevent wildfires.

Our response: The Service recognized in the 2012 critical habitat rule the need to actively manage forests, particularly in the drier provinces, to increase their resiliency to wildfires, including ladder fuels reduction, uneven age management, and prescribed burning. This recognition includes the forests that are within 5 miles (8 kilometers) of Indian lands. Existing roads are not considered critical habitat; thus, the designation should not hinder road maintenance anywhere, including access across Federal lands. Likewise, the Service concludes potential incremental economic impacts remain very low, as discussed in previous responses to comments, above. In sum, the critical habitat designation does not preclude active management or road maintenance of the lands adjacent to Indian lands, and we find that the commenter did not provide credible information to support consideration of exclusion of additional Federal lands adjacent to Indian land.

Comment (31): Commenters requested that we exclude Adaptive Management Areas and Experimental Forests because placing additional constraints on actions in these areas will limit the ability to conduct scientifically credible work and address wildfire risks.

Our response: The opportunities for scientific research and management experimentation associated with experimental forests and Adaptive Management Areas lend themselves to putting into practice the types of timber management the critical habitat rule recommends, thereby serving as a type of field laboratory to try new and alternative approaches that could prove useful in applying those approaches across a greater landscape. Additionally, there is enough flexibility built into the recommendations in the critical habitat rule that experimental forests and Adaptive Management Areas can continue to conduct their valuable work on their landscapes. We have completed section 7 consultations on actions carried out on Adaptive Management Areas since the 2012 designation of critical habitat that may affect that habitat and found those actions to be consistent with the Act. Additionally, our evaluation in the 2012 critical habitat rule found that the seven experimental forests included in the designation contain high-value occupied habitat for northern spotted owls within their borders. In many cases, the habitat in these experimental forests represents essentially an island of high-value habitat in a larger landscape of relatively low-value habitat; this is especially true in the Coast Range, a region where peer reviewers particularly noted a need for greater connectivity and preservation of any remaining high-quality habitat. See our response to *Comment (27a)* regarding perceived conflicts between the critical habitat designation and active forest management that addresses the risk of wildfire.

Comment (32): Commenters asserted that because the barred owl is now widespread and competes with the northern spotted owl, the designated critical habitat lacks the biological features necessary to restore northern spotted owl breeding populations and recover the subspecies and thus should be excluded. Commenters stated that it is unlikely the Service will have the financial and logistical capacity to effectively manage barred owls on all designated critical habitat.

Our response: Although Franklin *et al.* (2021, p. 15) found that barred owl competition is the dominant negative effect on northern spotted owl populations, the authors recognized that habitat loss due to harvest, wildfire, and climatic changes may also continue to negatively affect populations. They emphasized the importance of addressing barred owl management and maintaining habitat across the range of the northern spotted owl regardless of current occupancy to provide areas for recolonization and dispersal (Franklin *et al.* 2021, p. 18). Although the January Exclusions Rule emphasized barred owls as the primary threat to the northern spotted owl, addressing both the threat of competition with barred owls and habitat loss is important to the survival and recovery of the northern spotted owl. The Service is currently developing a barred owl management strategy to help reduce the effect of barred owls on northern spotted owls. But, a successful barred owl management strategy will be possible only if sufficient habitat for the northern spotted owl remains available for recovery.

Forest conditions that support northern spotted owls remain important even when those areas are also occupied by barred owls. Some northern spotted owls continue to occupy their traditional sites even in areas of dense barred owl populations, although they may modify their use of the area and expand their territories. Therefore, habitat remains vital to support these individuals.

The essential physical or biological features in terms of forest condition remain present even if not being used currently by territorial spotted owls because of the presence of barred owls. See the primary constituent elements listed in the December 4, 2012, revised critical habitat rule for a description of the physical or biological features that are essential to the conservation of the northern spotted owl (77 FR 71876; p. 72051).

Concerning the capacity to effectively manage barred owls, management actions will likely be shared by several Federal agencies as all Federal agencies have a responsibility in the recovery of listed species. Thus, any barred owl management will not be dependent solely on the financial and logistical capacity of the Service alone.

Comments on July 20, 2021, Proposed Rule

We have incorporated comments received on the July 20, 2021, proposed rule in the preceding comments sections where comments were similar to comments received on the August 20, 2020, proposed rule. In this section, we summarize and respond to the remaining comments received on the July 20, 2021, proposed rule.

Comment (33): Conservation groups commented that we should not exclude the Harvest Land Base lands given that recent annual demography reports indicate that management under the 2016 RMPs is not reversing the downward trend in northern spotted owl populations and that the RMPs have yet to demonstrate results.

Our response: The Harvest Land Base lands represent a very small fraction of the total designated critical habitat (approximately two percent), and the harvest that is anticipated to occur on these lands is expected to have a relatively small incremental impact on long-term northern spotted owl recovery for several reasons. In the near term, direct take of spotted owls will be minimized or avoided. In the long term, harvest on these lands will be meted out over several decades. During this timeframe we expect habitat conditions

on BLM's reserve lands to continue improving through natural recruitment and recovery. Thus, at a landscape level and over the decades, the remaining critical habitat on BLM and neighboring USFS lands will provide for spotted owl recovery.

In our July 20, 2021, proposed rule, we stated that ''[m]onitoring will assess status and trends in northern spotted owl populations and habitat to evaluate whether the implementation of the RMPs is reversing the downward trend of populations and maintaining and restoring habitat necessary to support viable owl populations (BLM 2016a).'' Effectiveness monitoring under the RMPs occurs every 5 years in conjunction with the effectiveness monitoring program established under the NWFP. The most recent demographic meta-analysis (Franklin *et al.* 2021) provided trend data for northern spotted owl populations from 1993 through 2018 (see the results summarized in *Comment (13)*), and the effectiveness monitoring report for northern spotted owl habitat is due to be released later this year. Thus, Franklin *et al.* (2021) captures only 2 years of RMP implementation, and this is not a meaningful timeframe over which to evaluate the effectiveness of the BLM's implementation of the RMPs. We established benchmarks in our biological opinion on the RMPs for evaluating effectiveness of their program; these benchmarks are based on three triggers for reinitiation of the consultation on the RMPs: If a barred owl management strategy and monitoring program does not begin on BLM lands by year 8 of the RMP implementation; if decadal limits for northern spotted owl territorial abandonment are exceeded; and if certain benchmarks for the rate of northern spotted owl population change on BLM lands are not met. The first benchmark for evaluating whether the plan has met the population change trigger will occur in 2029 when the first demographic analysis will be completed following implementation of a barred owl management strategy.

Comment (34): Conservation groups commented that we should not exclude the Harvest Land Base because critical habitat benefits the northern spotted owl as an essential tool for recovery that mandates a higher habitat conservation standard in section 7 consultation and provides guidance on the location of areas that are essential to the conservation of the northern spotted owl. They provided scientific literature (Taylor *et al.* 2005) that supports the effectiveness of critical habitat and found that species with a critical habitat designation are less likely to decline and more likely to recover than species without a critical habitat designation.

Our response: We agree with the commenters that critical habitat provides these benefits to the northern spotted owl, and we have considered these benefits in our weighing of the benefits of inclusion versus the benefits of exclusion of the Harvest Land Base lands. See our reconsideration of the weighing of these benefits and our extinction analysis in Consideration of Impacts Under Section 4(b)(2) of the Act.

Comment (35): Conservation groups, in expressing opposition to our exclusion of the Harvest Land Base lands, commented that our 2016 Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act directs the Service to prioritize the designation of critical habitat on Federal lands because of the affirmative conservation mandate Federal agencies have to utilize their authorities in furtherance of the purposes of the Act and to insure that any actions they authorize, fund, or carry out do not destroy or adversely modify critical habitat; and that exclusions from critical habitat are to focus on non-Federal lands. Commenters further stated that the Service failed to explain how these exclusions will not result in a significant increase in the risk of extinction.

Our response: Although the 2012 critical habitat designation preceded the 2016 Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act, we prioritized Federal lands in our designation: 97 percent of the 9.5 million acres (3.8 million hectares) designated are on Federal lands. The policy states that we would focus our exclusions on non-Federal land, but the policy did not preclude us from excluding Federal lands. As we stated in response to a comment on this issue in the 2016 policy, in most cases the benefits of inclusion will outweigh those of exclusion on Federal lands but there may be cases where that is not the case and exclusions of Federal land would be the outcome of the exclusion analysis. In any case, in adopting new regulations regarding section 4(b)(2) in December of 2020, we eliminated the presumption that we will not generally exclude Federal lands from critical habitat, and added provisions in support of considering such exclusions under 50 CFR 17.90(d)(1)(iv). See 85 FR 55398 at 55402 and 85 FR 82376 at 82382. Although the Department of Interior proposed to rescind those regulations on October 27, 2021 (86 FR 59346), they remain in effect until the Service takes final action on the proposal. We provide our exclusion analysis and analysis of the risk of extinction regarding exclusion of the Harvest Land Base lands in our Consideration of Impacts Under Section 4(b)(2) of the Act.

It is important to note that, in proposing this exclusion, the Service considered the very specific circumstances of the 2016 RMPs developed by BLM pursuant to its authorities and responsibilities, including under the O&C Act, as well as our commitment to consider exclusions in the settlement of litigation regarding the 2012 critical habitat rule. Therefore, the Service does not consider the exclusion of Federal lands in this final rule to set precedent for other Federal lands.

Comment (36): Conservation groups commented that the Service did not support the conclusion that the Harvest Land Base lands provide a relatively low level of short-term conservation value that is not similar or equal to that of the Late-Successional Reserve and that section 7 consultation would provide no incremental conservation benefit over what the RMPs themselves provide. Additionally, commenters suggested that our statement that maintaining critical habitat in the Harvest Land Base sends a confusing message to the public is arbitrary and capricious because Congress did not intend for the Service to ignore the purpose of the Act to avoid confusion.

Our response: The Harvest Land Base land use allocation is where the majority of BLM's programmed timber harvest will occur. Harvest in this area is meted out over time and minimized in other land-use allocations in order to minimize near-term negative effects to northern spotted owl habitat in the Harvest Land Base as habitat continues to further develop late-successional characteristics in the reserve land use allocations. Our analysis conducted for the section 7 consultation for the 2016 RMPs recognized that this land-use allocation, contrary to the reserves, was not intended to be relied upon for demographic support of northern spotted owls (FWS 2016, p. 553). Based on that, we reconsidered the relative value of including them in a critical habitat designation. See also our response to *Comment (19).* As a result, we do not agree with the commenter's assertion that our discussion about clarifying public understanding about the difference in conservation value provided by the Harvest Land Base versus the reserves is arbitrary and capricious.

Comment (37): Commenters stated that the Service failed to give weight to economic impacts in our section 4(b)(2) analysis because we stated that we are not excluding areas due to economic impacts.

Our response: Our July 20, 2021, proposed rule stated, ''we are not now proposing to exclude any areas solely on the basis of economic impacts.'' This statement was referring to the proposed exclusions of the BLM's Harvest Land Base and lands transferred to be held in trust for the Tribes. However, we requested comments on any significant new information or analysis concerning economic impacts that we should consider in the balancing of the benefits of inclusion versus the benefits of exclusion in the final determination. We have considered those impacts in Consideration of Impacts Under Section 4(b)(2) of the Act.

Comment (38): Commenters asserted that exclusions to critical habitat would eliminate the need for land management agencies to improve habitat.

Our response: The BLM will continue to manage the Harvest Land Base according to the management direction in their RMPs. See our response to *Comments 16–17* above for a discussion of how the RMPs are consistent with the recovery of the northern spotted owl and provide needed habitat management.

Comment (39): A commenter requested that we not exclude specific areas of Harvest Land Base lands in critical habitat Unit 2 that are adjacent to or near a particular grove of old-growth trees in Late-Successional Reserve stating that any harvest in that area would damage the grove.

Our response: We appreciate the commenter's commitment to the conservation of this particular forest grove. However, as stated earlier, the Harvest Land Base will continue to be managed according to the management direction of the BLM's RMPs even if excluded from critical habitat. We encourage the commenter to provide public comment through the BLM's NEPA process if forest management projects are planned for this area.

Summary of Changes From Proposed Rule

This final rule incorporates changes to our proposed rule based on the comments and information we received, as discussed above in the Summary of Comments and Recommendations. All changes made were included accordingly in the document, tables, and maps. As a result, the final designation of critical habitat reflects the following changes from the July 20, 2021, proposed rule (86 FR 38246):

1. We corrected acreage calculation errors and considered updated boundaries for Harvest Land Base lands from the BLM in the acreages of lands proposed for exclusion in Subunits NCO 4, NCO 5, ORC 1, ORC 2, ORC 3, ORC 5, ORC 6, WCS 1, WCS 2, WCS 3, WCS 4, WCS 5, WCS 6, ECS 1, ECS 2, KLW 1, KLW 2, KLW 3, KLW 4, KLW 5, KLE 1, KLE 2, KLE 3, KLE 4, KLE 5, KLE 6. As a result, the exclusions in this final rule are 359 acres (145 hectares) more than what was included in the proposed rule.

2. We corrected the coordinates or plot points from which the maps were generated. The information is available at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0050, and from the Oregon Fish and Wildlife Office website at *https://www.fws.gov/oregon.*

Withdrawal of the January Exclusions Rule

In our March 1, 2021, final rule (86 FR 11892) extending the effective date of the January Exclusions Rule, we acknowledged that the additional areas excluded in that final rule (more than 3.2 million acres (1.3 million hectares)) and the rationale for the additional exclusions were not presented to the public for notice and comment. We noted that several members of Congress expressed concerns regarding the additional exclusions, among other concerns, which they identified in a February 2, 2021, letter to the Inspector General of the Department of the Interior seeking review of the January 15, 2021, final rule. We also noted we received at least two notices of intent to sue from interested parties regarding allegations of procedural defects, among other potential defects, with respect to our rulemaking for the final critical habitat exclusions.

We received a number of comments in response to our March 1, 2021, final rule wherein we invited public comment on: (1) Any issues or concerns about whether the rulemaking process was procedurally adequate; (2) whether the Secretary's conclusions and analyses in the January Exclusions Rule were consistent with the law, and whether the Secretary properly exercised his discretion under section 4(b)(2) of the Act in excluding the areas at issue from critical habitat; and (3) whether, and with what supporting rationales, the Service should reconsider, amend, rescind, or allow to go into effect the January Exclusions Rule. Commenters identified potential defects in the January Exclusions Rule—both procedural and substantive. We summarized these comments in our April 30, 2021, final rule delaying the effective date of the January Exclusions Rule until December 15, 2021 (86 FR 22876).

Based on these comments and concerns, and comments we received on our July 20, 2021, proposed rule (86 FR 38246) (see Summary of Comments and Recommendations section above), we reconsidered the rationale and justification for the large exclusion of critical habitat identified in the January Exclusions Rule. As a result, the Service concludes that there was insufficient rationale and justification to support the exclusion of approximately 3,472,064 acres (1,405,094 hectares) from critical habitat for the northern spotted owl, an exclusion that removed an additional approximately 3.2 million acres (1.3 million hectares) from designation as compared with the August 2020 proposed rule. Our reexamination of the January Exclusions Rule identified defects and shortcomings, which we summarize in the following paragraphs. We received additional comments addressing these asserted defects and shortcomings in response to our July 20, 2021, proposed rule, and addressed those above, see responses to *Comments A–G.*

We provided an insufficient opportunity for the public to review and comment on the changes made from the proposed to final exclusions in the January Exclusions Rule, which would have necessitated additional notice and an opportunity to comment. The January Exclusions Rule, had it gone into effect, would have excluded substantially more acres (36 percent of designated critical habitat versus the 2 percent proposed in the August 11, 2020, proposed revised rule). The January Exclusions Rule also excluded critical habitat in a much broader geographic area than proposed, including adding exclusions in Washington and California when only exclusions in Oregon had been included in the proposed rule. The January Exclusions Rule also included new rationales for the exclusions that were not identified in the August 11, 2020, proposed revised critical habitat rule (85 FR 48487). These included generalized assumptions about the economic impact of both the listing of the northern spotted owl and the subsequent designation of areas as critical habitat; the stability of local economies and protection of the local custom and culture of counties; the presumption that exclusions would increase timber harvest and result in longer cycles between harvest, that timber harvest

designs would benefit the northern spotted owl, and that the increased harvest would reduce the risk of wildfire; and that northern spotted owls may use areas that have been harvested if some forest structure was retained. The public did not have an opportunity to review or comment on these new rationales. Further, the public did not have an opportunity to comment on the expanded critical habitat exclusions made in the January Exclusions Rule in light of the information included in the December 15, 2020, finding, with supporting species report (85 FR 81144, FWS 2020), that the northern spotted owl warrants reclassification to endangered status that was published just 3 weeks before the January Exclusions Rule.

Additionally, the January Exclusions Rule excluded all of the O&C lands managed by BLM and USFS including those allocated to reserves. In our January Exclusions Rule, we failed to reconcile our prior finding that areas designated on O&C lands were essential to the conservation of the subspecies. The Service previously concluded in our 2012 critical habitat rule (77 FR 71876) that the O&C lands and portions of other lands managed as ''matrix'' lands for timber production significantly contribute to the conservation of the northern spotted owl, that recovery of the owl cannot be attained without the O&C lands, and that our analysis showed that not including some of these O&C lands in the critical habitat network resulted in a significant increase in the risk of extinction.

In response to our March 1, 2021, rule (86 FR 11892) extending the effective date of the January Exclusions Rule, some commenters stated that we provided sufficient notice and an opportunity for the public to be aware of the potential for the expansion of the exclusions from the proposed to final rules. Industry groups asserted that the August 11, 2020, proposed revised critical habitat rule (85 FR 48487) made clear that additional exclusions were being considered, in part, based on our request for information on additional exclusions we should consider (AFRC 2021, pp. 5–;6). In contrast, many other commenters objected to a lack of notice and opportunity to comment on the significant changes. These included comments from the newly impacted State fish and wildlife agencies (Washington Department of Fish and Wildlife 2021, California Department of Fish and Wildlife 2021). In addition, the exclusion of all ''matrix'' lands managed by the USFS amounted to over 2 million acres in areas of the National Forests in three States, with limited analysis of the effects of such exclusions on the conservation of the northern spotted owl and in hindsight, minimal supporting rationale. If we had decided to implement the January Exclusions Rule, in order to ensure a robust opportunity for public input on the changes, we would have erred on the side of transparency and would have opened a public comment period on that rule and considered that feedback before deciding to implement the rule. Based on our review, we proposed instead to withdraw the January Exclusions Rule, prior to its implementation, due to a number of concerns that the exclusions would be inconsistent with the conservation purposes of the Act, which we summarize below and affirm in this final rule.

First, the large additional exclusions made in the January Exclusions Rule were premised on inaccurate assumptions about the status of the owl and its habitat needs. The large additional exclusions were based in part on an assumption that barred owl control is the primary requirement for northern spotted owl recovery, when in fact the best scientific data indicate that protecting late-successional habitat also remains critical for the conservation of the spotted owl as well (FWS 2020, p. 83; Franklin *et al.* 2021, p. 18). Although they require different management approaches, both actions are fundamental to the spotted owl's recovery.

In addition, in concluding that the exclusions of the January Exclusions Rule will not result in the extinction of the northern spotted owl (a finding necessary for any section 4(b)(2) exclusions), the January Exclusions Rule relied, in part, upon a large-scale barred owl removal program that is not yet in place. The Service is in the process of developing a barred owl management strategy, but the specific features of any such program and where they may be applied are yet to be determined, and the Service will engage public review and comment before deciding. As discussed above, our experimental removal of barred owls showed a strong, positive effect of that removal on the survival of spotted owls, but considerable economic, logistical, social, and regulatory issues remain before large-scale non-experimental removal of barred owls could occur.

Since completion of the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011), the Service has worked closely with Federal and State land managers to minimize or avoid impacts to extant spotted owls due to timber harvest, while at the same time carrying out the barred owl removal experiment (Wiens *et al.* 2021) and initiating development of a barred owl management program. This approach has allowed for timber harvest to proceed under State and Federal land management plans (*e.g.,* BLM's 2016 Resource Management Plans in western Oregon (BLM RMPs)) while minimizing impacts to long-term spotted owl recovery prospects. Potential timber harvest in the areas that would be excluded from critical habitat in the January Exclusions Rule would far exceed the level of impact to spotted owls that the Service anticipated in those land management plans. Thus, it is premature to rely solely on an anticipated barred owl management program to offset the potential loss of millions of acres of spotted owl critical habitat over time or to conclude that the loss would not result in the extinction of the subspecies.

Second, the January Exclusions Rule undermined the biological redundancy of the critical habitat network by excluding large areas of critical habitat across the range of the northern spotted owl. The 2012 critical habitat designation (77 FR 71876) increased in size compared to previous designations, in part to account for the likelihood of habitat loss due to more frequent wildfires. This increase provided for biological redundancy in northern spotted owl populations and habitat by maintaining sufficient habitat on a landscape level in areas prone to frequent natural disturbances, such as the drier, fire-prone regions of its range (Noss *et al.* 2006, p. 484; Thomas *et al.* 2006, p. 285; Kennedy and Wimberly 2009, p. 565). We will continue to monitor habitat impacts due to wildfire and other disturbances and evaluate the integrity of the spotted owl's critical habitat network.

As stated earlier, in the development of habitat conservation networks generally, the intent of spatial redundancy is to increase the likelihood that the network and populations can sustain habitat losses by inclusion of multiple populations unlikely to be affected by a single disturbance event. This redundancy is essential to the conservation of the northern spotted owl because disturbance events such as fire can potentially affect large areas of habitat with near-term negative consequences for northern spotted owls. This redundancy can also allow for a relatively small amount of human-caused disturbance such as timber harvest without jeopardizing the subspecies or adversely modifying its critical habitat, provided that

disturbance is carefully planned and evaluated within the appropriate temporal and spatial context such as projects consistent with BLM's 2016 RMPs. The evaluation process used by the Service in our 2012 final critical habitat rule (77 FR 71876) addresses spatial redundancy at two scales: By (1) making critical habitat subunits large enough to support multiple groups of owl sites; and (2) distributing multiple critical habitat subunits within a single geographic region. This approach was particularly the case in the fire-prone Klamath and Eastern Cascades portions of the range. This increased habitat redundancy also provides for the conservation of northern spotted owls as they face growing competition from barred owls.

The January Exclusions Rule also failed to consider the needs for connectivity between critical habitat units, particularly in southern Oregon where dispersal habitat is already limited in areas that were excluded in the January Exclusions Rule. Successful dispersal of northern spotted owls is essential to maintaining genetic and demographic connections among populations across the range of the subspecies (FWS 2020, p. 24). As stated previously, some critical habitat subunits that were designated to provide this support were reduced in the January Exclusions Rule by up to 90 percent. If these exclusions were implemented and management actions or plans were amended to allow for increased harvest at the scale of these exclusions, these subunits would no longer provide the demographic support for which they were designated. Again, as described above, the Service anticipates and plans for some amount of human-caused and natural disturbance in these critical habitat units, meted out over space and time in a manner that supports recovery over the long term. The January Exclusions Rule could facilitate timber harvest that could greatly accelerate those impacts well beyond what was anticipated in the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) and various land management plans.

The January Exclusions Rule also overstates the conservation value of areas not designated as critical habitat for the owl on other Federal lands, such as national parks and designated wilderness areas. These Federal lands do contain habitat for the northern spotted owl and are generally protected from proposed Federal activities that would result in significant removal of that habitat, and so they do provide areas that can serve as refugia for northern spotted owls. These protected areas, however, are relatively small and widely dispersed across the range of the owl. As we noted above, these areas are also typically high-elevation lands, and it is unlikely that the owl populations would be viable if their habitat were restricted to these areas (55 FR 26114, June 26, 1990; p. 26177). They are disjunct from one another and cannot be relied on to sustain the subspecies unless they are part of and connected to a wider reserve network as provided by the 2012 critical habitat designation (77 FR 71876, December 4, 2012). As discussed above, that network would have been greatly diminished and fragmented by the January Exclusions Rule if implemented. See also our response to *Comment (Cii).*

Third, under section 4(b)(2) of the Act, the Secretary cannot exclude areas from critical habitat if he or she finds, ''based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.'' The January Exclusions Rule relied upon a determination that the exclusions will not result in the extinction of the northern spotted owl based in part on a faulty interpretation of the science relevant to spotted owl conservation. Specifically, the then-Director in her memo to the Secretary of January 7, 2021 (FWS 2021a) overestimated the probability that the northern spotted owl population would persist into the foreseeable future if a large portion of critical habitat was removed and subsequent timber harvest were to occur on those lands. The then-Director excluded 3,472,064 acres (1,405,094 hectares) from the total of 9,577,342 acres (3,875,812 hectares) designated as critical habitat in 2012, or 36 percent of the total. Most of this exclusion is concentrated in Oregon and, due to its geographic location and habitat quality, it represents a significant portion of the subspecies' most important remaining habitat. The O&C lands, for example, encompass 37 percent of the lands that were covered under the NWFP in Oregon and provide important habitat for reproduction, connectivity, and survival in the Coast Range and portions of the Klamath Basin and provide connectivity through the Coast Range and between the Coast Range and western Cascades (Thomas *et al.* 1990, p. 382, BLM 2016c, p. 17).

The best scientific information indicates that the northern spotted owl population is in a precipitous decline, and the Service recently concluded that the subspecies warranted reclassification to endangered status under the Act (85 FR 81144, December 15, 2020). The subspecies is essentially extirpated from British Columbia, rapidly declining to near extirpation in Washington and parts of Oregon, and is in the earlier stages of similar declines in the rest of its range. Northern spotted owls are declining at a rate of 5.3 percent across their range, and populations in Oregon and Washington have declined by over 50 percent, with some declining by more than 75 percent, since 1995 (Franklin *et al.* 2021). As the statutory definition of ''endangered'' states, the subspecies is in ''danger of extinction throughout all or a significant portion of its range.'' 16 U.S.C. 1532(5)(A)(6). Significant changes to habitat conservation of the type that were assumed by the January Exclusions Rule would greatly exacerbate this decline by working synergistically with the impacts from barred owl.

The Director's memo failed to recognize that (1) spotted owl populations are declining precipitously due to a combination of historical habitat loss and more recent competition with the barred owl; and (2) the only way to arrest this decline and have a high probability of preventing extinction (in any timeframe) is to both manage the barred owl threat *and* conserve adequate amounts of high-quality habitat distributed across the range in a pattern that provides acceptable levels of connectivity as well as protection from stochastic events. This conclusion is supported by the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011), as well as more recent peer-reviewed and published scientific research (Weins *et al.* 2021, Franklin *et al.* 2021). Franklin *et al.* (2021, p. 18) emphasizes the importance of maintaining northern spotted owl habitat, regardless of occupancy, in light of competition from barred owls to provide areas for recolonization and connectivity for dispersing northern spotted owls.

The 2012 critical habitat designation—including the relatively minor exclusions (approximately two percent) proposed here on BLM land in the Harvest Land Base—preserves the habitat conservation portion of this goal. The much larger exclusion of 36 percent proposed in the January Exclusions Rule thwarts this goal, given its large size and its disproportionate concentration in high-quality habitat in Oregon. The Service finds that the January Exclusions Rule would have resulted in the northern spotted owl's extinction even though spotted owls are long-lived and are widely dispersed over a large geographic range. Individual spotted owls can live up to 20 years, and they

are widely distributed at low densities across three States. Extinction due to removal of large areas of critical habitat would not be immediate, but it is still a reasonable scientific certainty. For example, if the bulk of the northern spotted owl's habitat were to be removed on Federal lands except for the portion that exists in national parks, one could reasonably conclude the subspecies would not go extinct immediately, say within 1 to 5 years. Individual northern spotted owls remaining in those parks scattered across the range might persist for one or a few generations (that is, greater than 20 years). However, the subspecies is still likely to go extinct over a longer time period in this scenario. Basic conservation biology principles and metapopulation dynamics predict that those remnant and now isolated northern spotted owl subpopulations would likely die off without regular genetic and demographic interaction with northern spotted owls from neighboring subpopulations.

Forces working against the persistence of these isolated subpopulations include genetic inbreeding and catastrophic stochastic events such as wildfire. Therefore, it is a reasonable scientific conclusion that the subspecies would go extinct under such conditions, but this extinction process will occur over decades as these forces manifest themselves and as long-lived individuals die off. The extinction would not occur immediately, as it might with rarer and more short-lived species, but eventual extinction remains a scientifically predictable outcome with a high likelihood of certainty. Yet by the time it becomes apparent that extinction were imminent, it would likely be too late to provide sufficient protected habitat. This was one of the issues that led to the listing of the northern spotted owl in the first place—the loss of old-growth habitat at such a rapid pace that it was predicted to disappear from federally managed forested habitats within several decades (55 FR 26114, June 26, 1990; p. 26175). The Act requires us to use the best available science when applying the discretion afforded in section 4(b)(2), and this includes making a reasonable and defensible scientific interpretation of extinction risk that is relevant to the species under consideration. In this final rule, we correct the previous misapplication of section 4(b)(2) extinction risk analysis, which would not meet the Act's purpose of conserving listed species and the ecosystems on which they depend.

In sum, substantial issues were raised that the January Exclusions Rule would preclude the conservation of the northern spotted owl, a subspecies we recently found warrants reclassifying as an endangered species in danger of extinction throughout its range (85 FR 81144, December 15, 2020). Upon review and reconsideration as described above, the Service withdraws the January Exclusions Rule and instead excludes 204,294 acres (82,675 hectares) within 15 counties in Oregon as explained further below. This relatively small exclusion represents only 2 percent of the total designated critical habitat, in contrast to the 36 percent proposed in the January Exclusions Rule, and it is consistent with the long-term recovery and conservation goals of the northern spotted owl.

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.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely, by vagrant individuals). Our regulation at 50 CFR 424.02 also now defines the term ''habitat'' for the purposes of designating critical habitat only, as the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species. This new definition of ''habitat'' applies by its terms to new critical habitat designations only (see 85 FR 81411, December 16, 2020), and since this final rule excludes areas from critical habitat (rather than designating them) the new regulation does not apply to this rule. Nonetheless, given the number of comments received asserting that some areas we designated as critical habitat in 2012 are not ''habitat'' and seeking exclusions from the designation pursuant to section 4(b)(2) on that basis, we take this opportunity to review the existing critical habitat designation for conformance with the new regulatory definition. In summary, as explained further below, all the areas within the designation of critical habitat for the northern spotted owl are within the geographical area occupied by the species at the time of listing and encompass forested areas with specific characteristics which are the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes 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. Under our implementing regulations, this means the Federal action cannot directly or indirectly appreciably diminish the value of critical habitat as a whole for the conservation of the listed species, see 50 CFR 402.02, definition of ''destruction or adverse modification.'' The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation 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 Federal agency would be required to consult with the Service under section 7(a)(2) of the Act.

However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency is not required to abandon the proposed activity, nor to restore or recover the species; instead, the Federal action agency must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat, or obtain an exemption from the Act's prohibitions under the relevant implementing regulations (see 50 CFR part 451).

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 and 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 that occur in specific areas occupied by the species at the time of listing, we focus on the features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we may 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. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

In our December 4, 2012, final rule (77 FR 71876), we determined that all units and subunits met the Act's definition of being within the geographical area occupied by the species at the time of listing. Our determination was based on the northern spotted owl's wide-ranging use of the forested landscape, and the distribution of known owl sites at the time of listing. In addition, we noted that parts of most units and subunits contain a forested mosaic that includes younger forests that may not have been occupied at the time of listing. Even though we had reasonable certainty based on modeling that such areas were occupied at the time of listing, because we did not have complete survey data, we also evaluated these areas under the ''unoccupied'' standard, and found they were essential to the conservation of the species (77 FR 71876; p. 71971). Because the forest habitat is dynamic, we also noted the value of the younger forests in being the source of continued growth to develop more fully into the high-quality habitat preferred by owls for nesting, roosting, and foraging (77 FR 71876; p. 71971).

These ''younger forest'' stands that are part of the forest mosaic within the critical habitat units may not contain all of the high-quality characteristics of the habitat preferred by owls for nesting and roosting, but they contain the resources and conditions necessary to support one or more life processes and are, thus, ''habitat'' for the northern spotted owl. Our December 4, 2012, final rule (77 FR 71876) includes four PBFs (formerly referred to as primary constituent elements, or PCEs) specific to the northern spotted owl. In summary, PBF (1) is forest types that may be in early-, mid-, or late-seral stages and that support the northern spotted owl across its geographical range; PBF (2) is nesting and roosting habitat; PBF (3) is foraging habitat; and PBF (4) is dispersal habitat (see 77 FR 71876, December 4, 2012, pp. 72051–72052, for a full description of the PBFs). Not all of the designated critical habitat contains all of the PBFs, because not all life-history functions require all of the PBFs. Some subunits contain all PBFs and support multiple life processes, while some subunits may contain only PBFs necessary to support the species' particular use of those subunits as habitat. However, all of the areas designated as critical habitat support at least PBF (1), in conjunction with at least one other PBF. Thus, PBF (1) must always occur in concert with at least one additional PBF (PBFs 2, 3, or 4) (77 FR 71876, December 4, 2012, p. 71908). The younger forest areas are habitat for the owl and were included in the designation to provide, at a minimum, connectivity (physical and biological feature (PBF) (4)-dispersal habitat) between occupied areas, room for population growth, and the ability to provide sufficient habitat on the landscape for the owl in the face of natural disturbance regimes (*e.g.,* fire). In some portions of the owl's range, younger forests can provide for additional life processes, including nesting if they contain some structural features of older forests, as well as foraging depending on prey availability (77 FR 71876; p. 71905).

Some continue to assert that a few sentences in the 2012 critical habitat rule, or in memoranda developed in support of the economic analysis are proof that the Service inappropriately designated ''non-habitat'' in the 2012 rule. We acknowledge that we may have been imprecise in our language in places in the 2012 critical habitat preamble, and/or in other places in the large rulemaking record, but as we explain and reaffirm here, the designated critical habitat for the northern spotted owl as described in the regulation itself at 50 CFR 17.95(b) (the entry for ''Northern Spotted Owl (*Strix occidentalis caurina*)'') is all habitat for the northern spotted owl. In particular, the memoranda developed for the FEA was never intended to address the scientific question of whether particular areas function as current habitat for the northern spotted owl. Rather, as explained more fully below, for purposes of estimating the incremental economic impact of the designation over those caused by the listing of the species as threatened, the FEA identified areas of younger forest in the proposed designation that might not be currently occupied by the northern spotted owl. In such areas, Federal land managers might determine that proposed projects may result in ''no effect'' on northern spotted owls and are thereby the projects would not be subject to an ESA Section 7 consultation premised on federal agencies' obligation to avoid jeopardy to the species. The economic-impact assumption was that projects in those areas therefore might only be subject to the additional regulatory cost of an ESA Section 7 consultation if designated as critical habitat. This was a simplifying and conservative

assumption from the standpoint of the economic analysis, but is interpreted by some as meaning that the Service determined that these areas of younger forest are not spotted owl habitat. That interpretation is incorrect, for all of the reasons explained above and below.

While all of the critical habitat units designated consist of habitat for the owl, some areas within these units and subunits will at times not be used by individual northern spotted owls due to a variety of reasons, whether they may be human activity (*e.g.,* timber harvest), catastrophic wildfire, displacement by competition with the nonnative barred owl, or due to natural and localized population fluctuations. This does not mean, however, that the areas are no longer designated critical habitat.

Individual owls live for over twenty years, and during these two decades an individual owl may experience multiple disturbance events (*e.g.,* a fire or a windstorm) within its large home range that renders portions of this range temporarily reduced in habitat quality. A catastrophically burned area of critical habitat, for example, may affect multiple owl home ranges and create diminished habitat conditions (*e.g.,* reduced cover or nesting structure) that might not be used by the owl for all life functions in the near term (Jones *et al.* 2020, entire). But even with reduced usage or temporary avoidance many burned areas still provide some habitat value such as foraging or dispersal, and this value tends to rebound as the forest conditions naturally begin recovering soon after the fire. We take this ecological process into account in reviewing federal actions during the section 7 consultation process because even severely burned forest habitat often retains patchy habitat clumps within the burned area, and the burned areas regrow over time. Although there are multiple ecological factors that influence how quickly forests recover after a fire, such as whether the landscape is in the drier or moister portions of the range, this recovery usually begins immediately after the fire. The quality of the habitat—and its relative value to spotted owl conservation—increases over time as forest succession occurs. In summary, ecosystems are not static, and a critical habitat designation must incorporate this dynamism of the owl's habitat into its design if the designation is to provide for the conservation of the species.

When determining critical habitat boundaries for the December 4, 2012, final rule, we made every effort to avoid including areas that lack physical or biological features for the northern spotted owl. Due to the limitations of mapping at fine scales, we were often not able to segregate these areas from areas shown as critical habitat on maps suitable in scale for publication within the Code of Federal Regulations. The following types of areas are not critical habitat because they are not and cannot support northern spotted owl habitat, and are not included in the 2012 designation: Meadows and grasslands, oak and aspen (*Populus* spp.) woodlands, and manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas), and the land on which they are located. Thus, we included regulatory text in the December 4, 2012, final rule clarifying that these areas were not included in the designation even if within the mapped boundaries of critical habitat (77 FR 71876; p. 72052). In our experience, Federal agencies undertaking section 7 consultation with us and evaluating impacts to designated critical habitat do not have difficulty discerning the non-habitat that we narratively excluded, nor do they have difficulty discerning the physical and biological characteristics that qualify stands as critical habitat. In any case, if anyone seeking to apply the critical habitat rule to any particular areas has questions about how to apply the rule, the Service is available to provide technical assistance.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the Recovery Plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. 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 subspecies. 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.

The exclusion of 204,294 acres (82,675 hectares) within 15 counties in Oregon as described in this document does not change the December 4, 2012, final rule currently in effect with two exceptions: The only sections of the rule that published at 77 FR 71876 (December 4, 2012) that would change with this revision are table 8 in the Exclusions discussion (pp. 71948–71949), the subunit maps related to the exclusions (pp. 72057–72058, 72062, 72065–72067), and the index map of Oregon (p. 72054). The regulations concerning critical habitat have been revised and updated since 2012 (81 FR 7414, February 11, 2016; 84 FR 45020, August 27, 2019; 85 FR 81411, December 16, 2020; 85 FR 82376, December 18, 2020). Our December 4,

2012, designation of critical habitat for the northern spotted owl and the revisions in this rule are in accordance with the requirements of the revised critical habitat regulations, with the exception of the use of the term ''primary constituent element'' (PCE) in the December 4, 2012, final rule; here, we use the term ''physical or biological feature'' (PBF), as noted above, in accordance with the updated critical habitat regulations. The primary constituent elements (PCEs) are, however, the physical and biological features (PBFs) as described in the revised regulations: They are essential to the conservation of the subspecies, and they may require special management considerations or protection.

Final Revised Critical Habitat Designation

Consistent with the standards of the Act and our regulations, 9,373,676 acres (3,793,389 hectares) are now identified in 11 units and 60 subunits as meeting the definition of critical habitat for the northern spotted owl. The 11 units are: (1) North Coast Olympics, (2) Oregon Coast Ranges, (3) Redwood Coast, (4) West Cascades North, (5) West Cascades Central, (6) West Cascades South, (7) East Cascades North, (8) East Cascades South, (9) Klamath West, (10) Klamath East, and (11) Interior California Coast Ranges. Land ownership of the designated critical habitat includes Federal, State, and local government lands. No Indian or private lands were included in the critical habitat designation in 2012; lands formerly managed by the BLM that were designated as critical habitat subsequently were transferred into trust for two Tribes, which meant that subsequently these Indian lands were within the critical habitat designation; we have excluded those lands with this final rule. The approximate area of each subunit and excluded area within critical habitat subunits is shown in table 1. Only the units and subunits that we have revised in this rule are described below; see the 2012 critical habitat rule for descriptions of the units and subunits that remain unchanged.

TABLE 1—AREAS EXCLUDED, BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat, in acres (hectares) [1]	Areas excluded, in acres (hectares)	Rationale for exclusion
1	NCO 4	124,124 (50,231)	1,838 (744)	BLM Harvest Land Base.
1	NCO 5	198,320 (80,258)	8,482 (3,433)	BLM Harvest Land Base.
2	ORC 1	110,580 (44,750)	1,279 (518)	BLM Harvest Land Base.
2	ORC 2	261,220 (105,712)	7,900 (3,197)	BLM Harvest Land Base/Indian Lands.
2	ORC 3	204,036 (82,571)	4,907 (1,986)	BLM Harvest Land Base/Indian Lands.
2	ORC 5	176,276 (71,337)	15,070 (6,099)	BLM Harvest Land Base.
2	ORC 6	81,856 (33,126)	4,188 (1,695)	BLM Harvest Land Base/Indian Lands.
6	WCS 1	92,528 (37,445)	880 (356)	BLM Harvest Land Base.
6	WCS 2	151,319 (61,237)	1,087 (440)	BLM Harvest Land Base.
6	WCS 3	318,161 (128,756)	1,922 (778)	BLM Harvest Land Base.
6	WCS 4	378,744 (153,273)	6 (2)	BLM Harvest Land Base.
6	WCS 5	356,447 (144,249)	2 (1)	BLM Harvest Land Base.
6	WCS 6	99,436 (40,241)	18,120 (7,333)	BLM Harvest Land Base.
8	ECS 1	125,473 (50,777)	16,458 (6,660)	BLM Harvest Land Base.
8	ECS 2	66,039 (26,725)	2,379 (963)	BLM Harvest Land Base.
9	KLW 1	147,154 (59,551)	15,316 (6,198)	BLM Harvest Land Base/Indian Lands.
9	KLW 2	149,857 (60,645)	19 (8)	BLM Harvest Land Base.
9	KLW 3	146,005 (59,086)	1,685 (682)	BLM Harvest Land Base.
9	KLW 4	158,710 (64,228)	785 (318)	BLM Harvest Land Base.
9	KLW 5	31,062 (12,571)	<1 (<1)	BLM Harvest Land Base.
10	KLE 1	242,713 (98,223)	30 (12)	BLM Harvest Land Base/Indian Lands.
10	KLE 2	100,374 (40,620)	29,998 (12,140)	BLM Harvest Land Base/Indian Lands.
10	KLE 3	112,709 (45,612)	48,398 (19,586)	BLM Harvest Land Base.
10	KLE 4	255,888 (103,555)	1 (1)	BLM Harvest Land Base.
10	KLE 5	38,222 (15,468)	12,166 (4,923)	BLM Harvest Land Base.
10	KLE 6	167,715 (67,872)	11,376 (4,604)	BLM Harvest Land Base.

[1] Acreages differ slightly from those in 77 FR 71876 due to updated GIS analysis.

This revision excludes from critical habitat areas identified by BLM as allocated to the Harvest Land Base land use in the 2016 RMPs. Under the BLM RMPs, some land-use allocations, such as Riparian Reserve, require identification of features on the ground. The BLM typically determines the location of such features as part of implementing actions and subsequently corrects land-use allocation boundaries consistent with the direction in the RMP. Therefore, some areas within the 2012 critical habitat designation that are currently mapped as Riparian Reserve in the RMPs are corrected on site-specific review to be mapped as Harvest Land Base. These corrections are expected to be minor in scope and reflect the most accurate information. As such, we assume such corrected acreage in the Harvest Land Base would be excluded by this final rule. The Late-Successional Reserve, where the majority of critical habitat overlaps BLM-managed lands, is not subject to these boundary adjustments.

We used GIS data provided by BLM that identified land use allocations under their 2016 revised RMPs and lands transferred to be held in trust for Tribes under the Western Oregon Tribal Fairness Act to identify areas for exclusion in this final rule (BLM 2021b).

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after

taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he or she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless the Secretary 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 the determination to exclude a particular area, 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.

We finalized a new regulation regarding the application of section 4(b)(2) exclusion analyses on December 18, 2020 (85 FR 82376). Although the new regulation superseded our 2016 Policy and prior regulation regarding exclusion analyses, the new regulation ''primarily adopts and deepens the provisions contained in the previous policy and rule'' (85 FR 82376). By its terms, that new regulation applies to ''critical habitat designations or revisions that FWS proposes after the effective date of this rulemaking action.'' *Id.* at 82376. As the revision to the 2012 critical habitat designation we finalize here was initially proposed in our proposed rule of August 11, 2020 (85 FR 48487), we could reasonably conclude that the new regulation does not apply to the reproposal we made of the same in July of this year. To avoid any uncertainty, however, we will consider the exclusions pursuant to the new regulation.

Thus, we considered the best information available regarding economic, national security, and other relevant impacts. ''Economic impacts'' may include, but are not limited to, the economy of a particular area, productivity, jobs, and any opportunity costs arising from the critical habitat designation (such as those anticipated from reasonable and prudent alternatives that may be identified through a section 7 consultation) as well as possible benefits and transfers (such as outdoor recreation and ecosystem services). ''Other relevant impacts'' may include, but are not limited to, impacts to Tribes, States, local governments, public health and safety, community interests, the environment (such as increased risk of wildfire or pest and invasive species management), Federal lands, and conservation plans, agreements, or partnerships. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Process for Exercising Discretion To Conduct an Exclusion Analysis

The Secretary has discretion whether to conduct an exclusion analysis under section 4(b)(2) in accordance with our regulations at 50 CFR 17.90(c). The Secretary will conduct an exclusion analysis when the proponent of excluding a particular area (including but not limited to permittees, lessees, or others with a permit, lease, or contract on federally managed lands) has presented credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion for that particular area. The Secretary may also otherwise decide to exercise discretion to evaluate any particular area for possible exclusion.

We received requests to exclude many areas within the critical habitat designation for the northern spotted owl. In determining whether we would conduct an exclusion analysis, we first evaluated whether the proponent of those exclusions presented credible information of a meaningful impact supporting benefits of excluding these areas. We found several requests did not meet this standard as described below (similar requests have been grouped into categories).

We received requests from several commenters to exclude younger forests; subunits with greater than 50 percent younger forests; low-quality habitat; stands under 80 years old; habitat-capable lands; areas for dispersal or connectivity; areas occupied by barred owls; parcels of less than 3,000 acres (1,214 hectares); smaller, fragmented parcels; previously burned Late-Successional Reserve; areas that have burned at high severity; and all ''uninhabited'' lands. All of these requests for exclusion rely on assertions that the areas either do not meet the definition of habitat for the northern spotted owl and must, therefore, not be designated as critical habitat, or that these areas should not be designated because they are currently ''unoccupied'' by owls. We did not conduct an exclusion analysis for these areas because the requests were based on the assertion that these areas are not habitat or that they cannot be essential to the recovery of the northern spotted owl because they are not currently occupied. These requests are not subject to an exclusion analysis because they are premised on incorrect conclusions regarding whether areas are ''habitat'' for the northern spotted owl in the first instance, misapprehend the concept of ''occupied at the time of listing'' which is the basis for critical habitat designation, or simply seek to re-argue elements of the critical habitat designation in 2012 that were determined in that rulemaking. See also our responses to *Comments (26–28).* Additionally, the Secretary did not otherwise decide to exercise discretion to evaluate these particular areas for possible exclusion. We note, however, there is some overlap with some of these requests for exclusions and the areas within the O&C lands and USFS matrix lands for which we did conduct an exclusion analysis, below. Our decision to conduct an exclusion analysis on the O&C lands and USFS matrix lands was not based on whether or not they met the definition of habitat, but rather on credible information that a meaningful impact may support benefits of exclusion of those lands.

We received comments seeking exclusions of areas of moderate to high fire risk; fire-prone forests or specific subunits in fire-prone areas; and areas of dry forest in California and the eastern Washington Cascades; and stating that all California lands because the critical habitat designation is asserted to conflict with active forest management designed to reduce the risk of wildfire and lead to subsequent fire suppression costs and reduced revenue. We did not conduct an exclusion analysis for these areas because the requests are based on the assertion that the critical habitat designation impedes active forest management and the asserted costs and lost revenue are based on this misunderstanding.

We find this assertion to be unfounded as described in our responses to *Comments (Civ)* and *(27a)* and explain how the critical habitat rule encourages and does not conflict with active forest management to reduce the risk of high-severity wildfire. Thus, we find that the commenters have not provided credible information that a meaningful impact may support benefits of excluding these areas. Additionally, the Secretary did not otherwise decide to exercise discretion to evaluate these particular areas for possible exclusion.

We received requests to exclude adaptive management areas and experimental forests based on the assertion that critical habitat places additional constraints on actions in these areas that will limit the ability to conduct scientifically credible work; that they are not suitable habitat due to the age-class of certain stands or as evidenced by a lack of current occupancy; that their designation has economic impacts; and an assertion that

the critical habitat designation conflicts with active forest management designed to reduce the risk of wildfire. We find that the commenter's assertion about constraints due to critical habitat are not credible and find there is enough flexibility built into the recommendations in the critical habitat rule that experimental forests and Adaptive Management Areas can continue to conduct their valuable work on their landscapes. We did not conduct an exclusion analysis for these particular areas because the requests were based on the assertion that these areas are not habitat and that the critical habitat designation impedes active forest management. We do not agree with these assertions as described in our responses to *Comment (31).* Additionally, commenters did not provide information on economic impacts to these specific areas, and they requested exclusion of these areas in combination with USFS matrix lands but only provided economic impacts related to USFS matrix lands. Therefore, we find the commenters did not provide credible information that a meaningful impact may support benefits of excluding these areas. We have conducted an exclusion analysis of the USFS matrix lands below.

We received requests from Douglas County to exclude several areas, including all USFS and BLM lands; private and State lands; county lands in Oregon; all lands in Douglas County; and BLM lands that are not O&C lands. They asserted various reasons for these requests, including: Reducing government processes (''red tape''), a need to provide management flexibility and ease of administration, economic impacts, and other reasons included in the requests described above. We did not conduct an exclusion analysis for these areas based on government process requirements or ease of administration because the commenters did not provide information pertaining to these areas that there are meaningful impacts related to these issues that may support benefits of excluding these areas. We do not agree with the assertion that the critical habitat designation conflicts with a need to provide management flexibility as described in our responses to *Comments (B–C), (6), (12), (25a),* and *(27a);* thus, we did not consider this to be credible information that these are meaningful impacts. We also did not conduct an exclusion analysis for these areas based on economic impacts because we found that Douglas County did not provide economic information for the exclusion requests listed here. Douglas County also requested exclusion of all O&C lands and USFS matrix lands, and provided information on economic impacts related to unoccupied matrix lands, which we have evaluated in our exclusion analysis for those lands below.

We received requests from Lewis and Skamania Counties, Washington, to exclude the White Pass Ski Area. While the counties provided information pertaining to the economic benefits the ski area provides to the local community, they did not provide information regarding the impact of the critical habitat designation beyond the need to conduct section 7 analyses for critical habitat. No information or evidence was presented to indicate that the critical habitat designation does or will impair the ski area's current operations, nor that it has or will unreasonably restrict any future expansion of the ski area given the small footprint and potential impacts within critical habitat. And, as noted in our response to *Comment (29),* developed portions of ski areas are functionally excluded from critical habitat although the mapping may overlap some of the ski area footprint. Thus, we did not conduct an exclusion analysis for the ski area because the commenters did not provide credible information that there are meaningful impacts related to critical habitat, beyond the minor administrative or transactional costs to complete section 7 consultation that may support benefits of excluding these areas.

The Secretary conducted exclusion analyses when the proponent of excluding a particular area (including but not limited to permittees, lessees, or others with a permit, lease, or contract on federally managed lands) presented credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion for that particular area. These include requests for the exclusion of Indian lands, BLM Harvest Land Base lands, O&C lands and USFS matrix lands, and Douglas County lands. These exclusion analyses are below in Exclusions Based on Other Relevant Impacts.

Process for Consideration of Impacts

When identifying the benefits of inclusion of an area as designated critical habitat, we primarily consider the additional regulatory benefits that that area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus (that is, an activity or program authorized, funded, or carried out in whole or in part by a Federal agency). We may also consider the educational benefits of mapping essential habitat for recovery of the listed species, benefits that may result from a designation due to State or Federal laws that may apply to critical habitat, and other benefits such as outdoor recreation or ecosystem services. In situations where economic benefits are relevant, we generally describe two broad categories of benefits of inclusion of particular areas of critical habitat: (1) Those associated with the primary goal of species conservation and recovery, and (2) those that derive from the habitat conservation measures to achieve this primary goal.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in economic benefits through creating or preventing the elimination of jobs, avoiding project delays or impediments that affect community interests, increased public health and safety, reduction of environmental risks (such as increased risk of wildfire or pest and invasive species management), and maintenance or fostering of partnerships that provide existing conservation benefits or may result in future conservation actions. The Secretary can consider the existence of conservation agreements and other land management plans with Federal, State, private, and Tribal entities when making decisions under section 4(b)(2) of the Act. The Secretary may also consider relationships with landowners, voluntary partnerships, and conservation plans, and weigh the implementation and effectiveness of these against that of designation to determine which provides the greatest conservation value to the listed species.

In the case of the northern spotted owl, the benefits of including an area as designated critical habitat include public awareness of the presence of northern spotted owls and the need for conservation, including habitat protection, and, where a Federal nexus exists, increased habitat protection for northern spotted owls through the Act's section 7(a)(2) mandate that Federal agencies insure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Additionally, continued implementation of an ongoing management plan for the area that provides conservation equal to or greater than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

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. We weigh the benefits of including or excluding particular areas according to the following principles pursuant to 50 CFR 17.90(d):

(1) We analyze and give weight to impacts and benefits consistent with expert or firsthand information in areas outside the scope of the Service's expertise unless we have knowledge or material evidence that rebuts that information. Impacts outside the scope of the Service's expertise include, but are not limited to, nonbiological impacts identified by federally recognized Indian Tribes; State or local governments; and permittees, lessees, or contractor applicants for a permit, lease, or contract on Federal lands.

(2) We analyze and give weight to economic or other relevant impacts relative to the conservation value of the area being considered. We give weight to those benefits in light of the Service's expertise.

(3) When weighing areas covered by conservation plans, agreements, or partnerships that have been authorized by a permit under section 10 of the Act, we consider: Whether the permittee is properly implementing the conservation plan or agreement; whether the species for which critical habitat is being designated is a covered species in the conservation plan or agreement; and whether the conservation plan or agreement specifically addresses the habitat of the species for which critical habitat is being designated and meets the conservation needs of the species in the planning area.

(4) When weighing areas that are covered by conservation plans, agreements, or partnerships that have not been authorized by a permit under section 10 of the Act, we consider: The degree to which the record supports a conclusion that designation would impair the realization of the benefits expected from the plan, agreement, or partnership; the extent of public participation in the development of the conservation plan; the degree to which agency review and required determinations have been completed; whether NEPA reviews or similar reviews occurred, and the nature of any such reviews; the demonstrated implementation and success of the chosen mechanism; the degree to which the plan or agreement provides for the conservation of the physical or biological features that are essential to the conservation of the species; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented; and whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, then the Secretary will exclude the area under section 4(b)(2) unless, based on the best scientific and commercial data available, the failure to designate the area as critical habitat will result in the extinction of the species.

Under section 4(b)(2) of the Act, we must consider all relevant impacts of the designation of critical habitat, including economic impacts. In addition to economic impacts (discussed in the Economic Analysis section, below), we considered a number of factors in a section 4(b)(2) analysis. We considered whether Federal or private landowners or other public agencies have developed management plans, habitat conservation plans (HCPs), or Safe Harbor Agreements (SHAs) for the area or whether there are conservation partnerships or other conservation benefits that would be encouraged or discouraged by exclusion from critical habitat in an area. We also considered other relevant impacts that might occur because of the designation. To ensure that our final determination is based on the best available information, we also considered comments received on economic, national security, or other potential impacts resulting from the 2012 designation of critical habitat from governmental, business, or private interests and, in particular, any potential impacts on small businesses. 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 revised critical habitat were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act.

Exclusions

Based on the information provided by entities supporting exclusions from critical habitat designation, as well as any additional public comments we received, we evaluated whether the areas proposed for exclusion were appropriate to exclude from the final designation under section 4(b)(2) of the Act. Our analysis indicated that the benefits of excluding these lands from the final designation outweigh the benefits of including the lands as critical habitat; therefore, the Secretary exercises her discretion to exclude these lands from the final designation. Accordingly, we exclude the areas identified in Table 8 Addendum under section 4(b)(2) of the Act from the critical habitat designation for the northern spotted owl. Table 8 identifies the specific critical habitat units from the December 4, 2012, final rule (77 FR 71876), which is codified in title 50 of the Code of Federal Regulations (CFR) at § 17.95(b), that we are excluding, at least in part; the approximate areas (ac, ha) of lands involved; and the ownership of the excluded areas. The Table 8 Addendum that follows displays this same information but in the format used in Table 8 in the December 4, 2012, final rule (77 FR 71876; pp.71948–71949).

TABLE 8 ADDENDUM [1]—LANDS EXCLUDED FROM THE FINAL REVISED DESIGNATION OF CRITICAL HABITAT FOR THE NORTHERN SPOTTED OWL UNDER SECTION 4(B)(2) OF THE ACT

Type of agreement	Critical habitat unit	State	Land-owner/ agency	Acres	Hectares
Resource Management Plan	NCO	OR	BLM Harvest Land Base	10,320	4,177
	ORC	OR	BLM Harvest Land Base	27,774	11,240

TABLE 8 ADDENDUM [1]—LANDS EXCLUDED FROM THE FINAL REVISED DESIGNATION OF CRITICAL HABITAT FOR THE NORTHERN SPOTTED OWL UNDER SECTION 4(B)(2) OF THE ACT—Continued

Type of agreement	Critical habitat unit	State	Land-owner/ agency	Acres	Hectares
	WCS	OR	BLM Harvest Land Base	22,017	8,910
	ECS	OR	BLM Harvest Land Base	18,837	7,623
	KLW	OR	BLM Harvest Land Base	13,987	5,660
	KLE	OR	BLM Harvest Land Base	91,198	36,906
Indian lands	ORC	OR	CTCLUSI [2]	5,571	2,254
	KLE	OR	CCBUTI [3]	10,772	4,359
	KLW	OR	CCBUTI	3,818	1,449
Total additional lands proposed for exclusion under section 4(b)(2) of the Act.				204,294	82,675

[1] This table is an addendum to table 8 of the December 4, 2012, final rule (77 FR 71876); table 8 appears at 77 FR 71948–71949.
[2] CTCLUSI is the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians.
[3] CCBUTI is the Cow Creek Band of Umpqua Tribe of Indians.

These exclusions are based on new information that has become available since the December 4, 2012, critical habitat designation for the northern spotted owl (77 FR 71876), including BLM's 2016 revision to its RMPs for western Oregon (BLM 2016a, 2016b) and the Western Oregon Tribal Fairness Act (Pub. L. 115–103). In the paragraphs below, we provide a detailed analysis of our consideration of these lands excluded under section 4(b)(2) of the Act.

Consideration of Economic Impacts

We did not exclude areas from our December 4, 2012, final critical habitat designation (77 FR 71876) based on economic impacts, and we are not now excluding any areas solely on the basis of economic impacts. The FEA of the 2012 critical habitat designation for the northern spotted owl found the incremental effects of the designation to be relatively small due to the extensive conservation measures already in place for the subspecies because of its listed status under the Act and because of the measures provided under the NWFP (USFS and BLM 1994) and other conservation programs (IEc 2012, pp. 4–32, 4–37). Thus, we concluded that the future probable incremental economic impacts were not likely to exceed $100 million in any single year, and impacts that are concentrated in any geographic area or sector were not likely as a result of designating critical habitat for the northern spotted owl. The incremental effects included: (1) An increased workload for action agencies and the Service to conduct reinitiated section 7 consultations for ongoing actions in newly designated critical habitat (areas proposed for designation that were not already included within the extant designation); (2) the cost to action agencies of including an analysis of the effects to critical habitat for new projects occurring in occupied areas of designated critical habitat; and (3) potential project alterations in areas where owls are not currently present within designated critical habitat.

Although we considered the incremental impact of administrative costs to Federal agencies associated with consulting on critical habitat under section 7 of the Act, economic impacts are not the primary reason for the exclusions we are adopting in this rule. See the December 4, 2012, final rule for a summary of the FEA and our consideration of economic impacts (77 FR 71876; pp. 71878, 71945–71947, 72046–72048). Our critical habitat regulations require that at the time of publication of a proposed rule to designate critical habitat, the Secretary make available for public comment a draft economic analysis of the designation (85 FR 82376, December 18, 2020). We reviewed the FEA (IEc 2012) as well as comments and additional information received on the proposed rule, and determined that because we were proposing only to exclude (*i.e.,* remove) areas from critical habitat and are not adding any areas not included in the 2012 designation and already analyzed in the 2012 economic analysis, the economic impact of the original designation would be further reduced and an entirely new economic analysis was not necessary. Instead, we have considered the 2012 economic analysis in conjunction with additional new information as described above and below.

Further, we have determined that the exclusion of the Harvest Land Base lands from critical habitat for the northern spotted owl would not itself result in changes in management or conservation outcomes for those lands. The BLM considered the critical habitat designation in revising its RMPs in 2016, and the design and implementation of future projects will follow the RMP management direction for each land-use allocation. We analyzed the RMPs and concluded that the land-use allocations and the management direction—including carefully designed timber harvest within the Harvest Land Base—would not jeopardize the owl's continued existence, nor destroy or adversely modify its designated critical habitat. With the exclusions of the Harvest Land Base areas from critical habitat finalized

here, the RMP land-use allocations and management directions will continue to apply. The change in section 7 consultation as a result of these exclusions will be that BLM will no longer have to address whether its actions in the excluded Harvest Land Base areas result in the destruction or adverse modification of critical habitat.

We note that during the public comment period on our prior proposed revised critical habitat rule (85 FR 48487, August 11, 2020), the American Forest Resource Council (AFRC 2020) and other commenters provided a new report prepared by The Brattle Group (2020) (Brattle Report) critiquing the 2012 critical habitat FEA (IEc 2012) and also provided a supplemental report prepared by The Brattle Group (2021) (Brattle supplement) in response to the July 20, 2021, proposed rule (86 FR 38246). The Brattle Report and supplement included updated estimates of the economic impacts of the 2012 rule using more recent data and/or different assumptions. We contracted with IEc to review the Brattle Report and provided a response to the report in the January 15, 2021, final rule (86 FR 4820; pp. 4825–4827). We also contracted with IEc to review the Brattle supplement and have provided a response to the supplement in this rule. We incorporated our review and consideration of this information in our response to comments above (See *Comments (20–23*). The Brattle Report and supplement do not alter our assessment that because we are removing areas from designation (rather than adding them), no new economic analysis is needed. Because the entire 2012 designation did not reach the threshold for economic significance under Executive Order 12866, these exclusions, which represent a reduction in the overall cost, logically also do not meet this threshold.

Consideration of Impacts on National Security

We did not exclude areas from our December 4, 2012, revised critical habitat designation based on impacts on national security, but we did exempt Joint Base Lewis-McChord lands based on the integrated natural resources management plan under section 4(a)(3) of the Act (77 FR 71876; pp. 71944–71945). We did not receive any comments or additional information on the impacts of the proposed revised designation on national security or homeland security. Therefore, we are not excluding any additional areas on the basis of impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are other conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we consider any Tribal forest management plans and partnerships and consider the government-to-government relationship of the United States with Tribes. Consistent with our regulations (see 50 CFR 17.90(d)(1)), we consider impacts identified by experts in, or by sources with firsthand knowledge of, areas that are outside the scope of the Service's expertise, giving weight to those benefits consistent with the expert or firsthand information, unless we had knowledge or material evidence that rebuts that information.

Indian Lands

Several Executive Orders, Secretarial Orders, and policies concern our working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Indian lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both the Service and the National Marine Fisheries Service, Secretarial Order 3206, American Indian Tribal Rights, Federal–Tribal Trust Responsibilities, and the Endangered Species Act (June 5, 1997) (S.O. 3206), is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, S.O. 3206 explicitly recognizes the right of Tribes to participate fully in the listing process, including designation of critical habitat. The Order also states: ''Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.'' In light of this instruction, when we undertake a discretionary section 4(b)(2) exclusion analysis, we always consider exclusions of Indian lands under section 4(b)(2) of the Act prior to finalizing a designation of critical habitat, and will give great weight to Tribal concerns in analyzing the benefits of exclusion.

In this final designation, the Secretary has exercised her discretion under section 4(b)(2) of the Act to exclude from this critical habitat designation certain Indian lands (lands held in trust) for two federally recognized Tribes: 14,590 acres (5,808 hectares) for the Cow Creek Band of Umpqua Tribe of Indians (CCBUTI) and 5,571 acres (2,254 hectares) for the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI). See table 1 for the unit and subunit locations of these Indian lands.

In our December 4, 2012, final rule (77 FR 71876), we prioritized areas for critical habitat designation by looking first to Federal lands, followed by State, private, and Indian lands. No Indian lands were designated in our 2012 final rule because we found that we could achieve the conservation of the northern spotted owl by limiting the designation to other lands. However, on January 8, 2018, the Western Oregon Tribal Fairness Act (Pub. L. 115–103) was passed by Congress and signed by the President. This act mandated that certain lands managed by BLM be taken into trust by the United States for the benefit of two Tribes and transferred management authority of approximately 17,800 acres (7,203 hectares) to CCBUTI and 14,700 acres (5,949 hectares) to CTCLUSI. Of the transferred lands, 20,161 acres (8,062 hectares) are located within designated critical habitat for the northern spotted owl. We considered this new information, as well as comments received on this proposed exclusion of these lands, and we are now excluding these Indian lands under section 4(b)(2) of the Act, as explained below.

Benefits of Inclusion—Indian Lands

Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat. A critical habitat designation requires Federal agencies to consult on

whether their activity would destroy or adversely modify critical habitat to the point where recovery could not be achieved.

Another possible benefit is that the designation of critical habitat can serve to educate landowners and land managers and the general public regarding the potential conservation value of an area, and this may contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. The designation of critical habitat, by providing information about the northern spotted owl and its habitat that reaches a wide audience, including other parties engaged in conservation activities, is considered of broad conservation value.

Designation of critical habitat may also increase awareness of the conservation importance of the area when activities are addressed under other Federal laws that require consideration of the potential environmental effects of proposed projects. Designated critical habitat signals the presence of important habitat that can trigger additional environmental review under these laws, and can help to reinforce careful consideration of the effects of actions on the environment. For example, significant effects to designated critical habitat (even if not resulting in destruction or adverse modification under the Act) could lead to additional environmental review under the National Environmental Policy Act, or other Federal laws.

Finally, there is the possible benefit that additional funding could be generated for habitat improvement by an area being designated as critical habitat. Some funding sources may rank a project higher if the area is designated as critical habitat. Thus, as Tribes compete for grants and other funding sources, wildlife-related conservation proposals that address areas of designated critical habitat may be more likely to be funded than projects not addressing critical habitat.

Benefits of Exclusion—Indian Lands

The benefits of exclusion of Indian lands from designated critical habitat are significant, and are tied to our commitment to support Tribal self-determination. We generally defer to Tribes to develop and implement conservation and natural resource management plans for their lands and resources, which includes benefits to the northern spotted owl and its habitat that might not otherwise occur. The CCBUTI and CTCLUSI are the governmental entities best situated to manage and promote the conservation of the northern spotted owl on their trust land consistent with the principles and policies indicated in Secretarial Order 3206; Executive Order 13175; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2). Our deference to these Tribes for their management of their trust lands enhances our existing effective working relationships, and allows us to support the Tribes in the manner they consider most useful as they lead efforts for the conservation of the northern spotted owl and its habitat on these lands.

We find that other conservation benefits are provided to the affected critical habitat subunits and the northern spotted owl and its habitat by excluding these lands from the designation. For example, the Continuous Forestry Management Approach adopted by the CCBUTI in their forest management plan takes proactive prevention, control, and recovery actions to mitigate damage and loss of forest values from wildfire, insects, and disease and other events. Additionally, the CTCLUSI has committed to coordination with the Service in developing its approach to conservation of listed species for these newly acquired lands. Both Tribes supported these exclusions in their comment letters in response to the proposed rule. For these reasons, we have determined that excluding these recently transferred lands from the designation of critical habitat for the northern spotted owl is of substantial benefit in aid of the unique relationship between the Federal Government and Tribes and in support of Tribal self-governance.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Indian Lands

The benefits of including Indian lands in the critical habitat designation are limited to the incremental benefits gained through the regulatory requirement to consult under section 7 and consideration of the need to avoid adverse modification of critical habitat, agency and educational awareness, potential additional grant funding, and the reinforcing review of environmental effects under other laws. While these regulatory benefits are important, in the context here, the Tribes' commitment to continue to coordinate with us in conserving habitat for the northern spotted owl in these newly acquired areas as they manage the landscape is also important. Consistent with principles of self-determination and the unique Federal–Tribal relationship, we conclude that these Tribally led efforts will be more effective if these lands are excluded from the designation. We view this as a substantial benefit because we have developed a cooperative working relationship for the mutual benefit of endangered and threatened species, including the northern spotted owl. Because the Tribes will implement habitat conservation efforts on these newly acquired lands, and are aware of the value of their lands for northern spotted owl conservation, the educational benefits of a northern spotted owl critical habitat designation are less important than they would otherwise be. For these reasons, we have determined that designation of critical habitat would have few, if any, additional benefits beyond those that will result from the presence of the subspecies.

In summary, the benefits of these Indian lands in critical habitat are limited to some enhanced regulatory processes. The benefits of excluding these areas from designation as critical habitat for the northern spotted owl are significant, and include encouraging the continued development and implementation of special management measures that the Tribes plan for the future or are currently implementing. These activities and projects will allow the Tribes to manage their natural resources to benefit the northern spotted owl. This approach is consistent with the government-to-government nature of our working relationship with the Tribes, and also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to the species that would not otherwise be available to encourage and maintain cooperative working relationships with the Tribes. We find that the benefits of excluding this area from critical habitat designation outweigh the benefits of including this area.

Exclusion Will Not Result in Extinction of the Subspecies—Indian Lands

We have determined that exclusion of these Indian lands will not result in extinction of the subspecies. Firstly, as discussed under Effects of Critical Habitat Designation Section 7 Consultation in the 2012 critical habitat rule (77 FR 71876, December 4, 2012, p. 71937), if a Federal action or permitting occurs, the known presence of northern spotted owls or their habitat would require evaluation under the jeopardy standard of section 7 of the Act, even absent the designation of critical habitat, and thus will protect the subspecies against extinction. Secondly, the Tribes are committed to protecting and

managing these lands and species found on those lands according to their Tribal and cultural management plans and natural resource management objectives, which provide conservation benefits for the northern spotted owl and its habitat. Thirdly, the Indian lands we are excluding represent a very small percentage (0.0021 percent) of the critical habitat designation, and excluding these lands will not affect the overall function of critical habitat at the critical habitat-unit level or rangewide. Accordingly, we have determined that the 20,161 acres (8,062 hectares) of Indian lands are excluded under subsection 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the subspecies.

Federal Lands

The Secretary has broad discretion under the second sentence of section 4(b)(2) on how to weigh the impacts of designation. In particular, ''[t]he consideration and weight given to any particular impact is completely within the Secretary's discretion.'' (H.R. Rep. No. 95–1625, at 17 (1978)). In considering how to exercise this broad discretion, we are mindful that Federal land managers have unique obligations under the Act. First, Congress declared that ''all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act''; see section 2(c)(1). Second, all Federal agencies have responsibilities under section 7 of the Act to carry out programs for the conservation of listed species and to ensure their actions are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Specific to critical habitat, the only direct consequence of its designation is the Act's requirement that Federal agencies ensure, through section 7 consultation, that any action they fund, authorize, or carry out does not destroy or adversely modify designated critical habitat. While the benefits of excluding non-Federal lands include development of new conservation partnerships, those benefits do not generally arise with respect to Federal lands, because of the independent obligations of Federal agencies under sections 2 and 7 of the Act.

Accordingly, the benefits of including Federal lands in a designation are greater than non-Federal lands because there is a Federal nexus for projects on Federal lands. Thus, if a project for which there is discretionary Federal involvement or control is likely to adversely affect the critical habitat, a formal section 7 consultation would occur and the Services would consider whether the project would result in the destruction or adverse modification of the critical habitat. The costs that this requirement may impose on Federal agencies can be divided into two types: (1) The additional administrative or transactional costs associated with the consultation process, and (2) the costs to Federal agencies and other affected parties, including applicants for Federal authorizations (*e.g.,* permits, licenses, leases), of any project modifications necessary to avoid destruction or adverse modification of critical habitat.

Thus, in any exclusion analysis for Federal lands, we will consider not only the transactional costs associated with section 7 consultation with a Federal agency, but also any potential costs to affected parties, including applicants for Federal authorizations (*e.g.,* permits, licenses, leases, contracts), that would stem from any project modifications that may be required to avoid destruction or adverse modification of critical habitat. While we agree that the transactional costs of section 7 consultation with Federal agencies tend to be a relatively minor cost, we do not wish to foreclose the potential to exclude areas under Federal ownership in cases where the benefits of exclusion outweigh the benefits of inclusion. Consideration of other Federal agency transactional costs and other costs, including those to a permittee or lessee, are considered on a case-by-case basis.

BLM Harvest Land Base Lands

In this final designation, the Secretary has exercised her discretion under section 4(b)(2) of the Act to exclude from this critical habitat designation 184,133 acres (74,613 hectares) of Harvest Land Base lands that are described and managed pursuant to the BLM RMPs revised in 2016 (BLM 2016a, 2016b). See table 1 for the unit and subunit locations of these exclusions.

2016 BLM RMP Revisions—In 2011, the Service revised the northern spotted owl Recovery Plan (see 76 FR 38575, July 1, 2011), and the revised plan recommended ''continued application of the reserve network of the NWFP until the 2008 designated spotted owl critical habitat is revised and/or the land management agencies amend their land management plans taking into account the guidance in this Revised Recovery Plan'' (FWS 2011, p. II–3). In 2016, BLM revised its RMPs for western Oregon, resulting in two separate plans (BLM 2016a, 2016b). BLM's 2016 revision of its RMPs considered the 2011 Recovery Plan recommendations as well as the revised critical habitat designation made in 2012. These two BLM plans, the Northwestern Oregon and Coastal Oregon Record of Decision and Resource Management Plan (BLM 2016a) and the Southwestern Oregon Record of Decision and Resource Management Plan (BLM 2016b), address all or part of six BLM districts across western Oregon.

The BLM RMPs provide direction for the management of approximately 2.5 million acres (1 million hectares) of BLM-administered lands for the purposes of producing a sustained yield of timber, contributing to the recovery of endangered and threatened species, providing clean water, restoring fire-adapted ecosystems, and providing for recreation opportunities (BLM 2016a, p. 20). The management direction provided in the RMPs is used to develop and implement specific projects and actions during the life of the plans.

The BLM RMP revisions assigned land-use allocations across BLM-managed lands in western Oregon; the land-use allocations define areas where specific activities are allowed, restricted, or excluded. The BLM land-use allocations include Late-Successional Reserve, Congressionally Reserved Lands and National Conservation Lands, District-Designated Reserves, and Riparian Reserve (collectively considered ''reserve'' land use allocations) and Eastside Management Area and Harvest Land Base (BLM 2016a, pp. 55–74).

Reserve land-use allocations comprise 74.6 percent (1,847,830 acres (747,790 hectares)) of the acres of BLM land under the RMPs (FWS 2016, p. 9). These lands are managed for various purposes, including preserving wilderness areas, natural areas, and structurally complex forest; recreation management; maintaining facilities and infrastructure; some timber harvest and fuels management; and conserving lands along streams and waterways. Of these lands, 51 percent (948,466 acres (383,830 hectares)) are designated as Late-Successional Reserve, 64 percent of which (603,090 acres (244,061 hectares)) are located within the critical habitat designation for the northern spotted owl (FWS 2016, p. 9). The management objectives for Late-Successional Reserve are designed to promote older, structurally complex forest and to promote or maintain habitat for the northern spotted owl and the marbled murrelet (listed as threatened under the Act), although some timber harvest of varying intensity is allowed. The Revised Recovery Plan for the Northern

Spotted Owl relies on the Late-Successional Reserve network as the foundation for northern spotted owl recovery on Federal lands (FWS 2011, p. III–41).

The Harvest Land Base allocation comprises 19 percent (469,215 acres (189,884 hectares)) of the overall land use allocations and is where the majority of programmed timber harvest occurs (FWS 2016, p. 9; BLM 2016a, pp. 59–63). Of these acres, 39 percent (184,133 acres (74,613 hectares)) are located within the 2012 critical habitat designation for the northern spotted owl. Over 90 percent of these acres that are allocated to the Harvest Land Base and within designated critical habitat (172,712 acres (69,779 hectares)) are located on O&C lands. Under the management direction for the Harvest Land Base, timber harvest intensity varies based on the suballocation (moderate-intensity timber area, light-intensity timber area, or uneven-aged timber area) within the Harvest Land Base (BLM 2016a, pp. 59–63).

The management direction specific to the northern spotted owl (BLM 2016a, p. 100) applies to all land-use allocations designated in the BLM RMPs. This direction provides for the management of habitat to facilitate movement and survival between and through large blocks of northern spotted owl nesting and roosting habitat.

Based on new information provided in the revised BLM RMPs (BLM 2016a, 2016b), we are excluding from critical habitat 184,133 acres (74,613 hectares) of BLM lands where programmed timber harvest is planned to occur, *i.e.,* the Harvest Land Base as described in the 2016 RMPs. Approximately 172,712 acres (69,779 hectares) of this Harvest Land Base are O&C lands.

Benefits of Inclusion—BLM Harvest Land Base

As discussed above, the primary effect of designating any particular area as critical habitat is the Act's prohibition against the destruction or adverse modification of such habitat, which is evaluated in consultation with the Service under section 7 of the Act. Absent critical habitat designation, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

In general, this obligation to consult regarding effects to critical habitat remains a conceptual benefit of inclusion of the Harvest Land Base lands in the designated critical habitat. However, we completed a programmatic section 7 consultation on the BLM RMPs in 2016 that specifically addressed the impact of the BLM's plans to undertake timber harvest in the Harvest Land Base, including the effects on designated critical habitat. In consultation, the Service found that the management actions, including the level of timber harvest anticipated under these RMPs over the 50-year proposed timeline, was not likely to jeopardize the subspecies or destroy or adversely modify critical habitat (FWS 2016, pp. 700–703).

The programmatic approach of our section 7 consultation on the BLM RMPs allowed for the broad-scale evaluation of BLM's program to ensure that the management direction and objectives of the program are consistent with the conservation of listed species, while also providing a framework for site-specific consultation at the stepped-down, project-level scale. As individual projects are proposed under these RMPs, BLM consults at the project-specific level with the Service as necessary under section 7 to ensure that the site-specific actions will not jeopardize the subspecies, or destroy designated critical habitat. The step-down consultations also provide an opportunity for BLM to further minimize impacts to northern spotted owls as on-the-ground actions are designed and implemented.

As described in our Biological Opinion issued to the BLM (FWS 2016, pp. 4–5) and compared to a status quo without the BLM RMPs in place, the Service expects an overall net improvement in northern spotted owl populations on BLM lands under the RMPs, including when taking into account any take or adverse impacts to northern spotted owls due to timber harvest, fuels management, recreation, and other activities occurring under the RMPs. Our analysis of the impacts on the lands within the Harvest Land Base recognized that, while this land-use allocation was not intended to be relied upon for demographic support of northern spotted owls, the management direction under the BLM RMPs includes provisions that would contribute to the further development of late-successional habitat, including additional critical habitat features over time (FWS 2016, p. 553; 77 FR 71876, December 4, 2012, pp. 71906–71907). Although late-successional habitat currently existing within the Harvest Land Base may not remain on the landscape for the long term, the presence of northern spotted owl habitat within the Harvest Land Base in the short term would assist in northern spotted owl movement (PBF 4) across the landscape and could potentially provide refugia from barred owls while habitat continues to mature into more complex habitat and develop additional high-quality physical and biological features over time in reserved land-use allocations (FWS 2016, p. 553; 77 FR 71876, December 4, 2012, pp. 71906–71907).

Several aspects of the RMPs are expected to provide for northern spotted owl dispersal between physiographic provinces and between and among large blocks of habitat designed to support clusters of reproducing northern spotted owls even with the expected focus of harvest in the Harvest Land Base (FWS 2016, p. 698): The spatial configuration of reserves; the management of those reserves to retain, promote, and develop northern spotted owl habitat; and the management and scheduling of timber sales within the Harvest Land Base. In particular, BLM refined their preferred alternative management approach to minimize the creation of strong barriers to northern spotted owl east-west movement and survival between the Oregon Coast Range and Oregon Western Cascades physiographic provinces, and north-south movement and survival between habitat blocks within the Oregon Coast Range province, by augmenting its allocation to Late-Successional Reserve in those areas (BLM 2016c, p. 17). Therefore, BLM-planned timber harvest during the interim period while a barred owl management strategy is considered is not expected to substantially influence the distribution of northern spotted owls at the local, action area, or rangewide scales.

Of the designated critical habitat on BLM-managed lands in western Oregon addressed by the 2016 RMPs, 15 percent of critical habitat is designated on the Harvest Land Base and 85 percent is designated on other land-use allocations. We determined that the Harvest Land Base portion of the BLM landscape will provide less contribution to northern spotted owl critical habitat over time, while the reserve portions of the BLM lands will provide the necessary contributions for northern spotted owl conservation (FWS 2016, p. 554).

BLM will continue to rely on the effectiveness monitoring established under the NWFP for the northern spotted owl and late-successional and old-growth ecosystems. Effectiveness monitoring will assess status and trends in northern spotted owl populations and habitat to evaluate whether the implementation of the BLM RMPs is reversing the downward trend of populations and maintaining and

restoring habitat necessary to support viable owl populations (BLM 2016a).

In sum, the revised BLM RMPs provide for the conservation of the essential PBFs throughout the reserve land-use allocations and distribute the impacts to northern spotted owl habitat in the Harvest Land Base over time while the habitat conditions in the reserve land-use allocations improve. Based on our analysis in the Biological Opinion on the BLM RMPs (FWS 2016, pp. 700–703) and the BLM's conclusions in its records of decision adopting the RMPs, the conservation strategies in the RMPs are likely to be effective. These conservation measures will continue to be in effect regardless of whether the Harvest Land Base areas are designated as critical habitat for the northern spotted owl.

The Harvest Land Base areas provide a relatively low level of short-term conservation value for northern spotted owls. Retaining them as designated critical habitat, which suggests that they have a conservation value similar or equal to that of the reserve lands, sends a confusing message to the public and local land managers. Also, Federal actions in the Harvest Land Base that may affect designated critical habitat require section 7 consultation to address the effect on the designated habitat. Our experience in section 7 consultations to date indicates that these consultations provide little incremental conservation benefit over what is already provided for in these updated BLM RMPs and the section 7 consultations for activities that may affect the northern spotted owl for review of whether the activities jeopardize the subspecies. Section 7 consultations require considerable efforts by the involved BLM and Service biologists to identify and assess the effects to the designated critical habitat acres and increases the transactional time and effort spent on consultations, even though the conclusion by the Service has to date been consistently that no adverse modification has resulted. Thus, continuing to consult on adverse modification of critical habitat for actions in the Harvest Land Base is not an efficient use of limited consultation and administrative resources, given the thorough section 7 consultation already conducted on the 2016 RMPs and in the project-specific consultations conducted since the 2016 RMPs. The benefits of continuing to include Harvest Land Base areas within critical habitat for the northern spotted owl are, therefore, limited.

Another benefit of including lands in a critical habitat designation is that it generally serves to educate landowners, land managers, State and local governments, and the public regarding the potential conservation value of an area. Identifying areas of high conservation value for the northern spotted owl can help focus and promote conservation efforts by other parties. Any additional information about the needs of the northern spotted owl or its habitat that reaches a wider audience can be of benefit to future conservation efforts. This function is being achieved with the retention of critical habitat in the reserve land-use allocations. As discussed in the benefits of exclusion, however, this is is not the case for the BLM Harvest Land Base lands.

Benefits of Excluding—BLM Harvest Land Base

There are appreciable benefits that will be realized by excluding Harvest Land Base areas from critical habitat. Executive Order 12866 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. Excluding Harvest Land Base lands from the northern spotted owl critical habitat designation reduces the burden of additional section 7 consultation beyond any requirements to consult on effects to the subspecies for these lands that serve primarily to meet BLM's timber sale volume objectives (see our response to *Comment (3)* for an explanation of the distinction between analyses completed for critical habitat versus the subspecies under section 7). As stated above, critical habitat in the Harvest Land Base has been determined to have relatively lower conservation value when compared to reserve areas, and there is a benefit to communicating this distinction to the public and land managers. Retaining them as designated critical habitat, which suggests that they have a conservation value similar or equal to that of the reserve land-use allocation lands, may send a confusing message to the public and local land managers, especially given that we confirmed in our biological opinion that the 2016 RMPs would not destroy or adversely modify this critical habitat. Therefore, excluding these Harvest Land Base lands from the critical habitat designation would provide some incremental benefit by clarifying that these lands (as compared with those in the reserve allocations) do not play a primary role in relation to northern spotted owl conservation, and by eliminating any unnecessary regulatory oversight.

In addition, a benefit of exclusion of these lands is that it signals our support for the BLM's consideration of the conservation needs of the northern spotted owl in its resource management planning efforts. By incorporating and addressing those needs at the planning level, including engaging with the Service to help ensure a productive and robust network of reserves for the northern spotted owl, the BLM was able to develop RMPs and land-use allocations that also provide for timber production consistent with the conservation of the subspecies. This allows the Service to exclude areas to lessen regulatory burdens while conserving the northern spotted owl.

Benefits of Exclusion Outweigh the Benefits of Inclusion—BLM Harvest Land Base

The biological and regulatory benefits of including the BLM Harvest Land Base in critical habitat are minimal given the management objective for this land-use allocation, which is to provide a sustained yield of timber. As we determined in our section 7 consultation with BLM regarding the RMPs, such management when considered with the other elements of habitat management in the RMPs provide for the conservation of the owl. Although these lands provide some short-term conservation value, we already determined that timber harvest of these areas will not result in the destruction or adverse modification of critical habitat as that term is defined in our implementing regulations under the Act. We have also conducted numerous site-specific consultations with the BLM regarding the effects of projects on designated critical habitat since the 2016 RMPs went into effect, and we have not found any actions that would destroy or adversely modify critical habitat.

Section 7 consultations to address adverse modification of critical habitat for activities within the Harvest Land Base going forward would provide no incremental conservation benefit over the conservation already provided for in the BLM RMPs. Consultations to address effects to designated critical habitat in the Harvest Land Base would not be an efficient use of limited consultation and administrative resources that could be better utilized to address other forest-related issues, such as consultations on critical habitat for forest treatments in Late-Successional Reserve that improve the quality of northern spotted owl nesting, roosting, and foraging habitat or reduce susceptibility to disturbances, such as wildfire. Informational benefits of including the BLM Harvest Land Base in critical habitat is minimal, and retaining

these areas as designated critical habitat, which suggests that they have a conservation value similar or equal to that of the Late-Successional Reserve, may be confusing to the public.

In contrast, the benefits derived from excluding the Harvest Land Base outweigh the minimal benefit of including these lands in the designation. Excluding these areas clarifies the distinction between the management direction for reserves versus the Harvest Land Base. Additionally, excluding the Harvest Land Base reduces the unnecessary regulatory burden of additional section 7 analysis that will provide no additional conservation beyond what is already provided in the BLM RMPs and section 7 consultations for the owl under the ''jeopardy'' prong and may redirect limited resources towards section 7 consultations on actions that would improve critical habitat in the Late-Successional Reserve. Thus, the Secretary has determined that the benefits of excluding the BLM Harvest Land Base described in the 2016 BLM RMPs from the designation of critical habitat for the northern spotted owl outweigh the benefit of including these areas in critical habitat.

Exclusion Will Not Result in Extinction—BLM Harvest Land Base

We find that excluding the Harvest Land Base acres from the critical habitat designation, as finalized in this document, will have only a minor impact on the long-term conservation of the northern spotted owl and its habitat assuming that the conservation measures in the BLM RMPs are implemented as planned. Our 2016 Biological Opinion on the BLM RMPs found that the management actions anticipated under the RMPs, including harvest anticipated in the designated critical habitat in the Harvest Land Base, would not jeopardize the subspecies or destroy or adversely modify critical habitat (FWS 2016, pp. 700–703). Additionally, the Harvest Land Base lands represent only a small portion (less than 2 percent) of the overall critical habitat designation and represent only 19 percent of the land base managed by the BLM under the 2016 RMPs, with the remaining lands largely managed as reserves that provide demographic support of northern spotted owls. Therefore, and when considering that the remaining 98 percent of designated critical habitat is being retained on the landscape, we find that these exclusions will not result in extinction of the subspecies.

O&C Lands and Northwest Forest Plan Matrix Lands

The January Exclusions Rule determined that the benefits of exclusion of all O&C lands and NWFP matrix lands from the critical habitat designation outweighed the benefits of inclusion. We have reconsidered the benefits of inclusion and exclusion and the weighing of these benefits in this rule. As stated above, the Secretary has very broad discretion under the second sentence of section 4(b)(2) on how to weigh the impacts of a critical habitat designation.

The O&C lands we address here are those O&C lands within the designation, about 1.2 million acres (485,623 hectares), that are located on lands managed by the BLM outside the BLM's Harvest Land Base land-use allocation as determined in the 2016 RMPs, as well as O&C lands managed by the USFS. Collectively, these lands (all in Oregon) comprise other land-use allocations, the majority (77 percent) of which are Late-Successional Reserve and Riparian Reserve, and occur on lands managed by both the BLM (about 970,723 acres (392,837 hectares)) and USFS (about 237,561 acres (96,137 hectares)). The USFS matrix lands altogether (in three States) included in the 2012 critical habitat designation total about 2.1 million acres and (849,840 hectares) are managed by the USFS under the NWFP generally for timber harvest. The USFS manages some lands within the designated critical habitat that overlap, *i.e.,* areas that are both O&C lands and allocated as ''matrix'' (about 75,818 acres (30,682 hectares)).

Background on O&C Lands—The O&C lands were revested to the Federal Government under the Chamberlin-Ferris Act of 1916 (39 Stat. 218). The Oregon and California Revested Lands Sustained Yield Management Act of 1937, Pub. L. 75–405 (O&C Act), addresses the management of O&C lands. The O&C Act identifies the primary use of revested timberlands for permanent forest production. These lands occur in western Oregon in a checkerboard pattern intermingled with private land across 18 counties. The intermingled private lands are largely industrial timberlands managed primarily for timber production; as such, these private lands contain very little high-quality habitat for the northern spotted owl (and no designated critical habitat). Most of the O&C lands (82 percent) are administered by BLM (FWS 2019, p. 1) pursuant to its RMPs. BLM's RMPs identify certain revested timberlands for commercial timber harvest. The O&C Act provides that these lands be managed ''for permanent forest production, and the timber thereon shall be sold, cut, and removed in conformity with the principle of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities.'' The counties where O&C lands are located participate in a revenue-sharing program with the Federal government based on commercial receipts (*e.g.,* income from commercial timber harvest) generated on these Federal lands.

Since the mid-1970s, scientists and land managers have recognized the importance of forests located on O&C lands to the conservation of the northern spotted owl and have attempted to reconcile this conservation need with other land uses (Thomas *et al.* 1990, entire). Starting in 1977, BLM worked closely with scientists and other State and Federal agencies to implement northern spotted owl conservation measures on O&C lands. Over the ensuing decades, the northern spotted owl was listed as a threatened species under the Act (55 FR 26114, June 26, 1990), critical habitat was designated (57 FR 1796, January 15, 1992) and revised two times (73 FR 47326, August 13, 2008; 77 FR 71876, December 4, 2012) on portions of the O&C lands, and a recovery plan for the owl was completed (73 FR 29471, May 21, 2008, p. 29472) and revised (76 FR 38575, July 1, 2011). These and other scientific reviews consistently recognized the need for large portions of the O&C forest to be managed for northern spotted owl conservation while also providing for other uses of these lands.

Background on USFS Matrix Lands—The USFS matrix lands are managed under the 1994 NWFP amendments to forest plans and support timber production while also retaining some biological legacy components important to old-growth obligate species that would persist into future managed timber stands. Matrix lands occur across the range of the northern spotted owl in Washington, Oregon, and California. This land-use allocation was first identified in 1994. In 2012, we designated as critical habitat a subset of USFS matrix lands—those matrix lands that contain the features essential to the conservation of the subspecies and function as highly valuable northern spotted owl habitat. These areas are essential to providing for demographic support and successful dispersal of the

northern spotted owl and for buffering competition with the barred owl.

Although we work closely with the USFS to incorporate northern spotted owl conservation considerations into the USFS's ongoing land management actions through the section 7 consultation process, the USFS has not yet revised its forest plans and applied the recommendations of the 2011 Revised Recovery Plan nor expressly taken into consideration the 2012 critical habitat designation into these plans as has the BLM with their 2016 RMPs. The USFS has, however, initiated efforts to update the individual forest plans in the range of the northern spotted owl and is expected to complete this process in coming years. We will continue to work closely with the USFS to address the conservation needs of the northern spotted owl as the agency updates its various forest plans.

Benefits of Inclusion—O&C Lands and Matrix Lands

As discussed above, the primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not destroy or adversely modify designated critical habitat. Absent critical habitat designation, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. The January Exclusions Rule stated that the benefits of including the O&C lands and matrix lands are small because agencies would still be required to ensure that discretionary actions they fund, authorize, or carry out would not jeopardize the continued existence of the subspecies, regardless of whether those lands are designated as critical habitat. Upon reconsideration, we find that the section 7 consultations on critical habitat provide significant benefits as described below.

The critical habitat designation benefits the northern spotted owl as a rangewide conservation strategy and network that connects large blocks of habitat that are able to support multiple clusters of northern spotted owls. Both the O&C lands and USFS lands included in the designation provide connectivity and habitat areas in a spatial configuration that is essential to the conservation of the northern spotted owl. The O&C lands, for example, encompass 37 percent of the lands that were covered under the NWFP in Oregon and provide important habitat for reproduction, connectivity, and survival in the Coast Range and portions of the Klamath Basin; they provide connectivity through the Coast Range; and they provide connectivity between the Coast Range and western Cascades (Thomas *et al.* 1990, p. 382, BLM 2016c, p. 17). Similarly, USFS matrix lands within the designation provide 2.14 million acres of important habitat and connectivity across all three States. Our 2012 final critical habitat designation reduced the amount of matrix lands from what we proposed to ensure that only essential habitat was designated (77 FR 71876; 71889). Our evaluation in the 2012 critical habitat rule found that we cannot achieve recovery of the northern spotted owls without the majority of O&C lands and remaining matrix lands currently designated as critical habitat. Additionally, recent scientific findings and our December 15, 2020, finding (and supporting species report) that the northern spotted owl warrants reclassification to endangered status emphasize the importance of maintaining habitat in light of competition with barred owls (Wiens *et al.* 2021, pp. 1, 2; Franklin *et al.* 2021, p. 18; 85 FR 81144; FWS 2020, p. 83).

The critical habitat designation also identifies areas on the landscape that may require special management considerations or protection. These considerations are of even more importance given the statutory purpose of the O&C lands and the management direction for USFS matrix lands that focus primarily on commercial timber harvest (see *Special Management Considerations and Protection* in our 2012 critical habitat rule (77 FR 71876; p. 71908)). Through the critical habitat designation and the section 7 consultation process, the Service is able to work collaboratively with the USFS and the BLM to help design how timber harvest can occur in these areas while also minimizing impacts to spotted owl recovery.

Conserving extant, high-quality habitat and addressing the threat from barred owls are key components of the special management considerations in our 2012 critical habitat rule as well as our biological opinion on the BLM's 2016 RMPs. Because the barred owl is present throughout the range of the northern spotted owl, special management considerations or protections may be required in all or many of the critical habitat units and subunits to ensure the northern spotted owl has sufficient habitat available to withstand competitive pressure from the barred owl (Dugger *et al.* 2011, pp. 2459, 2467; Franklin *et al.* 2021, p. 18; 85 FR 81144; FWS 2020, p. 83; Wiens *et al.* 2021, pp. 1, 2). In particular, studies by Dugger *et al.* (2011, p. 2459) and Wiens (2012, entire) indicated that northern spotted owl demographic performance is better when additional high-quality habitat is available in areas where barred owls are present.

Additionally, scientific peer reviewers of the 2011 Revised Recovery Plan for the Northern Spotted Owl (FWS 2011, entire) and Forsman *et al.* (2011, p. 77) recommended that we address currently observed downward demographic trends in northern spotted owl populations by protecting currently occupied sites, as well as historically occupied sites, and by maintaining and restoring older and more structurally complex multilayered conifer forests on all lands (FWS 2011, pp. III–42 to III–43).

The types of management or protections that may be required to achieve these goals and maintain the physical or biological features essential to the conservation of the owl in occupied areas vary across the range of the subspecies. Some areas of northern spotted owl habitat, particularly in wetter forest types, are unlikely to be enhanced by active management activities, but instead need protection of the essential features; whereas other forest areas would likely benefit from more proactive forestry management. For example, in drier, more fire-prone regions of the owl's range, habitat conditions will likely be more dynamic, and more active management may be required to reduce the risk to the essential physical or biological features from fire, insects, disease, and climate change, as well as to promote regeneration following disturbance. The designation of these areas as critical habitat benefits the subspecies by ensuring that the special management considerations identified in the 2012 critical habitat rule are considered in the design and implementation of timber harvest projects in these areas.

The additional analysis required for critical habitat in a section 7 consultation requires action agencies to evaluate the effects of their actions on the critical habitat components that support the life history of the northern spotted owl regardless of whether the area is currently occupied by northern spotted owls; these are identified in the critical habitat rule as the physical and biological features (or primary constituent elements) that provide for nesting, roosting, foraging, and dispersal. In our consultations, the Service evaluates how those actions affect the conservation value of the critical habitat subunit to provide those features, and the analysis is then scaled up to evaluate those effects at the

critical habitat unit scale and the critical habitat designation as a whole. Evaluating habitat at multiple scales in consultations on timber harvest actions in critical habitat ensures the landscape continues to support the habitat network locally, regionally, and rangewide.

We previously concluded in a Biological Opinion that the BLM's 2016 RMPs provide adequate contributions for the recovery of the spotted owl, and thus the exclusion of the Harvest Land Base lands from critical habitat and some harvest of these lands is likewise consistent with recovery. In reconciling the sometimes conflicting goals of spotted owl recovery with providing a reliable timber harvest from Federal lands, we worked with BLM in their 2016 RMPs to greatly minimize impacts to spotted owls. We conclude that the relatively small amount of impact to spotted owls from timber harvest on these BLM lands is offset by the increase in conservation of extant forest on BLM lands, the recruitment of improved habitat in the future on those lands, and the BLM's commitment to help manage barred owls.

In contrast, we do not yet have an updated programmatic Biological Opinion on USFS land management plans that addresses critical habitat for the northern spotted owl, although the USFS completes section 7 consultation with us at the project level on actions that affect critical habitat for the subspecies. To date, our review in section 7 consultations has found all proposed timber harvest under the NWFP on National Forest System lands in critical habitat to: (1) Be compatible with northern spotted owl conservation, and (2) not destroy or adversely modify critical habitat. These consultations on critical habitat provide a benefit to the northern spotted owl in that they provide an opportunity for the Service to review projects that will occur within critical habitat to ensure the function of the network will remain intact. We conclude that review of projects proposed in critical habitat on USFS matrix lands and O&C lands through the ongoing section 7 consultation processes under current land management plans continues to be an appropriate way to evaluate effects of USFS and BLM actions on critical habitat function and is an important benefit of including these lands in the critical habitat designation.

Another benefit of including lands in a critical habitat designation is that it generally serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. Identifying areas of high conservation value for the northern spotted owl can help focus and promote conservation efforts by other parties. Any additional information about the needs of the northern spotted owl or its habitat that reaches a wider audience can be of benefit to future conservation efforts. There is a benefit to communicating to the public and land managers that despite the O&C lands and matrix lands designations, the habitat areas found on these lands are essential to the conservation of the northern spotted owl.

We work closely with both the BLM and USFS in our coordinated section 7 consultation processes, and have a keen understanding of the agencies' mission and mandates. Our local biologists meet regularly to discuss upcoming and ongoing Federal projects and their effects to both the subspecies and its critical habitat, and to address any concerns about the section 7 consultation process. Additionally, we meet regularly with local and regional forest managers with both agencies. This process and partnership, established under the NWFP, has been effective for many years. We conclude that this collaborative approach, which includes reviewing projects and discussing how they affect the physical and biological features of critical habitat for the northern spotted owl, is a benefit of including these lands in the critical habitat designation.

Benefits of Exclusion—O&C Lands and Matrix Lands

There would be benefits realized by excluding O&C lands and USFS-managed matrix lands from critical habitat. Executive Order 12866 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. Excluding O&C lands and USFS-managed matrix lands from the northern spotted owl critical habitat designation would reduce the burden of additional section 7 consultation beyond any requirements to consult on effects to the subspecies for these lands (see our response to *Comment (3)* for an explanation of the distinction between analyses completed for critical habitat versus the species under section 7). The January Exclusions Rule stated that eliminating the requirement to complete section 7 consultation on critical habitat, in effect lessening one of the regulatory hurdles, could lead to increased timber production in support of the management of the O&C lands for the production of timber. The January Exclusions Rule further stated that, because land management plans or amendments would undergo programmatic section 7 consultation to ensure that management actions do not jeopardize the continued existence of the subspecies, consulting on critical habitat is not an efficient use of limited consultation and administrative resources.

Upon reconsideration, however, we find greater value in continuing to consult programmatically and at the project level under section 7 on critical habitat on O&C lands outside of those allocated by BLM to the Harvest Land Base, and on USFS-managed matrix lands. The benefits derived in these section 7 consultations to address effects to critical habitat ensure special management considerations are taken into account when designing and implementing landscape-scale management programs and subsequent timber harvest projects within critical habitat. The consultations allow the Service to evaluate the effects on the functionality of the critical habitat network, and ensure that functionality is not significantly impaired. Since the implementation of the 2016 RMPs, we have the benefit of several years of experience in section 7 consultations with the BLM regarding the effect of proposed actions on the O&C lands. We find that focusing our consultation and administrative capacity on section 7 consultations in the O&C lands outside of the BLM's Harvest Land Base lands is a priority given that the majority of this area is designated as Late-Successional Reserve and Riparian Reserve that contribute essential habitat for the northern spotted owl. Likewise, we find that focusing our resources on consultations in the USFS-managed matrix lands is also a priority given that programmatic consultation has not occurred for critical habitat on these lands.

Additionally, as stated above, the O&C lands outside of the BLM Harvest Land Base allocation, and USFS-managed matrix lands included in the critical habitat designation, provide areas of higher-quality habitat that owls prefer for nesting, roosting, and foraging behavior and lower-quality habitat to provide for dispersal for northern spotted owls. Excluding them as designated critical habitat, which suggests that they have a conservation value that is less than that of the reserve land-use allocation lands, may send a confusing message to the public and local land managers. Therefore, the benefit of excluding the O&C lands and

USFS matrix lands from the critical habitat designation is reduced.

Based on our FEA (IEc 2012), we found that the most potential for economic impacts from the critical habitat designation would occur in relation to ''unoccupied matrix lands'' (at the time of the 2012 designation, BLM's Harvest Land Base lands were also considered matrix lands under the NWFP), which is where the difference between habitat being designated as critical, or not, would likely make the most difference. ''Unoccupied matrix lands'' in the FEA means areas of forested habitat (generally of less high quality relative to northern spotted owl needs) that at the time of the proposed project being consulted on under section 7 would not have resident northern spotted owls.

In the absence of a critical habitat designation, the Federal agency would have to first evaluate whether or not the proposed habitat modification would have an effect on northern spotted owls. Generally speaking, if there are no resident owls present and the habitat is not of particularly high quality nor designated as critical, Federal actions that would modify that habitat are less likely to create an adverse effect on the owl at an individual, let alone species level. And, in some cases, especially if the habitat to be modified is of marginal quality for the owl, the Federal agency may determine there is no effect on the species at all, in which case no section 7 consultation with the Service is required. If, on the other hand, the habitat being modified by the Federal action is designated as critical habitat, the current presence or absence of owls in the area is less relevant because the effect being analyzed is to that habitat, and the effect of the modification on the conservation value of the habitat for the species has to be considered. Thus, the critical habitat designation could require the Federal agency to undertake consultation with the Service and be precluded from adverse modification of the designated critical habitat, in an area where, absent that designation, the Federal agency might not have to consult at all because of the absence of effects to the species.

However, the FEA of the 2012 critical habitat designation for the northern spotted owl found the incremental effects of the designation to be relatively small due to the extensive conservation measures already in place for the subspecies because of its listed status under the Act and because of the measures provided under the NWFP (USFS and BLM 1994) and other conservation programs (IEc 2012, pp. 4–32, 4–37). The incremental effects included: (1) An increased workload for action agencies and the Service to conduct reinitiated section 7 consultations for ongoing actions in newly designated critical habitat (areas proposed for designation that were not already included within the extant designation); (2) the cost to action agencies of including an analysis of the effects to critical habitat for new projects occurring in occupied areas of designated critical habitat; and (3) potential project alterations in areas where owls are not currently present within designated critical habitat.

The FEA (IEc 2012) evaluated three scenarios to capture the full range of potential economic impacts of the designation. The first scenario contemplates that minimal or no changes to current timber management practices will occur, thus the incremental costs of the designation would be predominantly administrative. The potential additional administrative costs due to critical habitat designation on Federal lands range from $185,000 to $316,000 on an annualized basis for timber harvest. The second scenario posits that Federal agencies may choose to implement management practices that yield an increase in timber harvest relative to the baseline (current realized levels of timber harvest). For this scenario, baseline harvest projections were scaled upward by 10 percent, resulting in a positive impact on Federal lands ranging from $893,000 to $2,870,000 on an annualized basis for timber harvest. The third scenario considers that action agencies may choose to be more restrictive in response to critical habitat designation, resulting in a decline in harvest volumes relative to the baseline. To illustrate the potential for this effect, baseline harvest projections were scaled downward by 20 percent, resulting in a negative impact on timber harvest on Federal lands ranging from $2,650,000 to $6,480,000 on an annualized basis.

The USFS and BLM suggested certain alterations to the baseline timber harvest projections, based on differing assumptions regarding northern spotted owl occupancy in matrix lands and projected levels of timber harvest relative to historical yields. The FEA presents the results of a sensitivity analysis considering these alternative assumptions, which widen the range of annualized potential impacts to Federal timber harvest relative to the scenarios described above (IEC 2012b, pp. 4–37 to 4–39). This sensitivity analysis contemplated a situation in which 26.6 percent of northern spotted owl habitat on BLM matrix lands is unoccupied, and a 20 percent increase in baseline timber harvest in USFS Region 6 relative to historical yields. The range of incremental impacts under these alternative assumptions widens to a potential annualized increase of $700,000 under Scenario 2, and an annualized decrease of $1.4 million under Scenario 3, relative to the results reported above.

The January Exclusions Rule states that, recognizing the expertise of locally elected governments in areas relating to economic stability, exclusion of the O&C and matrix lands would benefit local counties and communities by supplying jobs and county revenues for schools and roads, and protecting the local tax base. In our reconsideration of that rule, we agree that economic benefits to the counties may ultimately accrue if O&C lands and matrix lands were excluded from the critical habitat designation because there would be a potential increase in timber harvest in some areas where, but for the critical habitat designation, the habitat modification would not be precluded via the Act otherwise. However, our 2012 FEA identified a range of potential outcomes due to the designation, including positive and negative effects. The analysis identified those counties that may be more sensitive to future changes in timber harvests, industry employment, and Federal land payments. Potential timber harvest changes related to critical habitat designation, whether positive, negative, or neutral, are one potential aspect of this sensitivity. The counties identified as relatively more sensitive to future changes in timber harvests, employment, and payments were Del Norte and Trinity Counties, California; Douglas and Klamath Counties, Oregon; and Skamania County, Washington. With regard to jobs, increases or decreases in timber harvests from Federal or private lands could result in positive or negative changes in jobs, respectively. The FEA notes that many factors affect timber industry employment (IEc 2012, Chapter 6). The scope of our analysis was limited to the incremental effects of critical habitat within the area proposed for designation by the northern spotted owl. The FEA did not consider potential changes in timber activities outside the proposed critical habitat designation, and did not evaluate the potential effects related to the timber industry as a whole.

We also considered information concerning economic impacts submitted by commenters, including AFRC and several counties, in the Brattle Report and Brattle supplement. See our responses to *Comments (20–23)* addressing several issues with the

analysis provided in the Brattle reports, specifically the assumptions or data used to produce the estimate of negative annualized timber harvest impacts due to the critical habitat designation. As discussed in our responses to *Comments (20–23),* we do not agree with their ultimate conclusions and find that the FEA provides the best available information on the incremental impacts of the 2012 critical habitat designation, as supplemented by the additional information provided by IEc (IEc 2020, 2021). Commenters also provided comments referring to Sierra Institute for Community and Environment and Spatial Informatics Group, titled ''Response to the Economic Analysis of Critical Habitat Designation for the Northern Spotted Owl by Industrial Economics.'' We addressed this report in our 2012 critical habitat rule; see our responses to *Comments (201–213)* in that rule (77 FR 71876; 72040–72043).

The January Exclusions Rule stated that making more lands available for timber harvest could lead to longer cycles between harvests or to harvests designed to benefit the northern spotted owl and reduce the risk of catastrophic wildfire, and that northern spotted owls can use second-growth timber that leaves a few snags or old trees on the harvested land. Upon reconsideration, we find there is much uncertainty about the potential that harvest cycles would be extended were the O&C lands and USFS matrix lands excluded. Rotation ages of federally managed lands are determined by the BLM and USFS considering a wide range of information and responsibilities, not just related to the northern spotted owl, or even the Act. In addition, the assumption in the January Exclusions Rule that excluding the O&C lands and USFS matrix lands would improve the management of Federal forested lands to reduce wildfire risks rests on an incorrect assumption that the critical habitat designation generally precludes habitat management to reduce wildlife risk. As stated throughout the 2012 critical habitat rule, active management of forests is encouraged, where appropriate, to reduce the risk of catastrophic wildfire.

We agree that while northern spotted owls may use second-growth forests, this is not their preferred habitat for meeting all of their life history needs. Their use of these areas is dependent on the age, diversity, and condition of those forests as well as on their proximity to large blocks of habitat that provide for reproduction and population growth. Scientific peer reviewers of the 2011 Revised Recovery Plan for the Northern Spotted Owl (FWS 2011, entire) and Forsman *et al.* (2011, p. 77) recommended that we address currently observed downward demographic trends in northern spotted owl populations by protecting currently occupied sites, as well as historically occupied sites, and by maintaining and restoring older and more structurally complex multilayered conifer forests on all lands (FWS 2011, pp. III–42 to III–43).

Benefits of Inclusion Outweigh the Benefits of Exclusion—O&C Lands and Matrix Lands

When weighing the benefits of inclusion and the benefits of exclusion of areas, we analyze and give weight to impacts and benefits consistent with expert or firsthand information in areas outside the scope of the Service's expertise unless we have knowledge or material evidence that rebuts that information. Impacts outside the scope of the Service's expertise include, but are not limited to, nonbiological impacts identified by federally recognized Indian Tribes; State or local governments; and permittees, lessees, or contractor applicants for a permit, lease, or contract on Federal lands. We also analyze and give weight to economic or other relevant impacts relative to the conservation value of the area being considered. We give weight to those benefits based on the Service's expertise.

We considered economic information submitted from commenters in the Brattle Report and supplement; however, the 2012 FEA (IEc 2012) and subsequent review of the report and supplement by IEc rebuts the information in those reports (IEc 2020, 2021). We acknowledge there is uncertainty over whether economic impacts will occur and to what extent, as well as uncertainty over whether exclusion of the O&C lands and matrix lands would result in economic benefits to the counties and communities where critical habitat is designated. We also acknowledge that the economic impacts, depending on the analysis and assumptions used, are not insignificant. However, even assuming the high end of the economic impacts identified in our economic analysis, or the higher economic impacts suggested by some commenters, such as AFRC and counties, based on the Brattle Report and supplement, ultimately we give greater weight to the conservation value of the O&C lands and USFS matrix lands than to potential economic benefits of excluding these lands, for the following reasons.

First, these areas are of significant conservation value to the spotted owl given the geographical location of the O&C lands and USFS matrix lands and the essential habitat they provide for the northern spotted owl. Our evaluation of the O&C lands and matrix lands in our 2012 critical habitat rule, and that of peer reviewers who reviewed the rule, demonstrates their importance to the conservation of the northern spotted owl. Additionally, our evaluation of a habitat network with reduced areas of high-value habitat on O&C lands and USFS matrix lands indicated a significant increase in extinction risk to the subspecies.

Second, our evaluation of the best available information on the status of the subspecies resulted in our recent finding that the northern spotted owl's status has declined such that we would be warranted in concluding that is now an ''endangered'' species under the Act, and not just ''threatened,'' *i.e.,* it is in danger of extinction throughout all or a significant portion of its range and warrants reclassification, but that such ''uplisting'' is precluded by other priorities (such as work to evaluate whether to list a species not already on the list). This ''warranted but precluded'' finding, which was made just prior to the January Exclusions Rule, reinforces the importance of ensuring essential habitat remains across the landscape conservation network provided by the designation.

Third, subsequent to this ''warranted but precluded'' finding, the most recent demographic meta-analysis (Franklin *et al.* 2021) found that northern spotted owls are declining at an accelerated rate (5.3 percent across their range), and populations in Oregon and Washington have declined by over 50 percent, with some declining by more than 75 percent, since 1995.

Fourth, the requirement for the USFS and BLM to consult with the Service concerning proposed impacts to critical habitat in the O&C lands outside of the BLM's Harvest Land Base and on the USFS matrix lands provides for meaningful coordination between the Service and the agencies regarding actions they are proposing and the needs of the northern spotted owl, providing a conservation benefit to owl recovery in Oregon, California, and Washington. The benefits derived in these section 7 consultations ensure special management considerations are taken into account when designing and implementing timber harvest projects within critical habitat and provide an opportunity to evaluate the effects those projects have on the functionality of the critical habitat network given the nature of projects that are likely to occur in these areas.

Fifth, designation of these areas as critical habitat clearly and unambiguously communicates to the public their disproportionate conservation value to spotted owl recovery, while excluding them from critical habitat would serve to confuse the public about their importance.

In sum, we find that the benefits of retaining as critical habitat the areas of O&C lands (outside of BLM's Harvest Land Base) and the currently designated USFS matrix lands outweigh the benefits of excluding these areas from critical habitat.

Exclusion Will Result in Extinction—O&C Lands and Matrix Lands

Under section 4(b)(2) of the Act, the Secretary cannot exclude areas from critical habitat if she finds, ''based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.'' We find, contrary to the January Exclusions Rule, that even were we to conclude that the benefits of exclusion of the O&C Act lands and the USFS matrix lands outweighed the benefit of their inclusion, their exclusion would result in the extinction of the northern spotted owl, and so such exclusion is prohibited under the Endangered Species Act. See also our analysis in Withdrawal of the January Exclusions Rule above.

There are large areas of important high-quality northern spotted owl habitat located on O&C lands and USFS matrix lands that were designated as critical habitat in 2012. Lower-quality habitat also occurs within these lands that provide for connectivity between areas of higher-quality habitat and nesting and roosting when higher-quality habitat is not available in a particular location. The 2012 critical habitat designation included northern spotted owl habitat in reserve land-use allocations, O&C lands, and the matrix that we found essential for the conservation of the subspecies based on our modeling results, expert biological opinion, and peer review. We determined that we cannot attain recovery of the northern spotted owl without conserving the habitat on these lands and that excluding them significantly increased the risk of extinction. Peer reviewers of both the Revised Recovery Plan for the Northern Spotted Owl (FWS 2011) and our proposed rule to revise critical habitat in 2012 supported this finding.

The January Exclusions Rule stated that, because competition with barred owls is the largest negative contributing factor to the decline of northern spotted owls, barred owl management must occur in order to protect the northern spotted owl from extinction. Upon reconsideration, we agree that barred owl management is necessary to prevent extinction of the northern spotted owl but also find that a reduction in habitat conservation (through exclusions from designated critical habitat) at the scale of all O&C lands and USFS matrix lands, in concert with the impacts from the barred owl, will result in the extinction of the northern spotted owl. As discussed in our recent 12-month finding and supporting documentation, the subspecies is in precipitous decline and warrants reclassification as endangered (85 FR 81144, December 15, 2020)—that is, the subspecies is in danger of extinction throughout all or a significant portion of its range. The northern spotted owl has experienced rapid population declines and potential extirpation in Washington and parts of Oregon, is functionally extirpated from British Columbia, and continues to exhibit similar declines in other parts of the range. Northern spotted owls are declining at a rate of 5.3 percent across their range, and populations in Oregon and Washington have declined by over 50 percent, with some declining by more than 75 percent, since 1995 (Franklin *et al.* 2021). Franklin *et al.* (2021, p. 18) emphasizes the importance of maintaining northern spotted owl habitat, regardless of occupancy, in light of competition from barred owls to provide areas for recolonization and connectivity for dispersing northern spotted owls. Exclusion of large areas of critical habitat undermines this principle.

The January Exclusions Rule stated that, although 3.4 million acres (1.4 million hectares) were excluded in that rule, the conservation provided to northern spotted owls in national parks and designated wilderness areas would ensure that the subspecies would not become extinct. See our reconsideration of the conservation value provided by these lands in our response to *Comment (Cii).* As we stated in our July 20, 2021, proposal, some of these areas are widely dispersed and cannot be relied on to sustain the subspecies unless they are part of and connected to a wider reserve network as provided by the 2012 critical habitat designation (77 FR 71876).

The January Exclusions Rule further stated that section 7 consultations on the subspecies would ensure the exclusion of the lands would not result in extinction of the northern spotted owl. As we discussed previously, section 7 consultations regarding whether or not a Federal action that adversely affects the species will ultimately jeopardize the continued existence of the species is an important tool for protecting a species even in absence of a critical habitat designation. Upon further review, however, that protection against ''jeopardy'' is not a complete stand-in for an analysis of effects to important habitat necessary for the subspecies, particularly when considering the difference in scale between the January Exclusions Rule and what we exclude in this final rule.

In this final rule, we are excluding about two percent of the designated critical habitat based on a programmatic consultation that considered the long-term effects of removal of that habitat by timber harvest and found it would not adversely modify the critical habitat, nor jeopardize the subspecies. We have since then conducted a number of evaluations in consultation on site-specific projects removing habitat in the Harvest Land Base and have again concluded, based on the best scientific information, that the actions will not result in the adverse modification of the value of the critical habitat to the subspecies nor result in jeopardy to the subspecies. These together give us confidence in the appropriateness of the exclusions we finalize today.

The January Exclusions Rule, on the other hand, would have excluded nearly 36 percent of the current designated critical habitat, without benefit of a programmatic approach by the relevant Federal land-managing agencies and a section 7 consultation to confirm the effects would not adversely modify the critical habitat for the subspecies nor would jeopardize it. Neither do we have the experience of several years of consultations at a project-specific level to consider the effects of removal of this habitat from the landscape and affirm it would not jeopardize the subspecies. To the contrary, based on the information we have, we conclude that such exclusions would result in the extinction of the owl. In such an instance, reliance on the section 7 ''jeopardy'' standard in future consultations alone is not a sufficient basis to affirm the benefits of exclusion.

The NWFP and the BLM RMPs provide adequate landscape-scale conservation for the northern spotted owl while allowing for relatively small areas of critical habitat to be harvested over time. Exclusion of all the O&C lands (including currently allocated to reserves) and all the USFS matrix lands could enable subsequent land management plan changes that would support habitat removal in areas that are essential to the conservation of the northern spotted owl. Exclusion of these O&C lands and USFS matrix lands

would not only preclude the recovery of the northern spotted owl (as we determined in 2012), but given the most recent and best available information we also find it would result in the subspecies' extinction. Given that northern spotted owls are long-lived and widely dispersed over a large, geographic range, extinction would not be immediate but would result if these lands were excluded.

State Lands

We also evaluated whether additional exclusions from the critical habitat designation under section 4(b)(2) of the Act should be considered on State lands. In our December 4, 2012, critical habitat designation (77 FR 71876), we excluded State lands in Washington and California that were covered by HCPs and other conservation plans. In Oregon, State agencies are currently working on HCPs that will address State forest lands in western Oregon, including the Elliott State Forest (managed by the Oregon Department of State Lands) and other State forest lands in western Oregon (managed by the Oregon Department of Forestry).

Habitat conservation plans in support of applications for incidental take permits under section 10(a)(1)(B) of the Act must be consistent with the long-term recovery needs of the species. When we undertake a discretionary section 4(b)(2) exclusion analysis, we consider areas covered by an HCP that have been authorized by a permit under section 10 of the Act, and generally exclude such areas from a designation of critical habitat if three conditions are met: (1) Whether the permittee is properly implementing the conservation plan or agreement;; (2) whether the species for which critical habitat is being designated is a covered species in the conservation plan or agreement; and (3) whether the conservation plan or agreement specifically addresses the habitat of the species for which critical habitat is being designated and meets the conservation needs of the species in the planning area.

The proposed State forest HCPs and any section 10 permitting decisions by the Service will not be completed prior to the publication of this document; thus, we are not able to assess all of the above criteria. As a result, we are not excluding additional State lands from the critical habitat designation for the northern spotted owl.

Available Conservation Measures

In publishing final rules to carry out the purposes of the Act, we include a description of any conservation measures available under the rule. As this rule is a revision to critical habitat excluding certain areas from that designation, there are no particular conservation measures specifically available under this rule. Rather, the conservation measures already in place and available to the entities managing the excluded lands (the BLM, the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, and the Cow Creek Band of Umpqua Tribe of Indians) remain available and unaffected by this rule.

Determinations of Adverse Effects and Application of the ''Adverse Modification'' Standard

In publishing final rules to revise critical habitat, we are, to the maximum extent practicable, required to include a brief description and evaluation of those activities (whether public or private) that might occur in the area, and which, in the opinion of the Secretary, may adversely modify such habitat or be affected by such designation. As this revision to critical habitat is exclusions from critical habitat, the exclusions will, by definition, eliminate the requirement for consideration of adverse modification of the excluded habitat. Our discussion in the 2012 critical habitat rule (77 FR 71876; pp. 71938–71944) still adequately addresses actions that may adversely modify critical habitat or be affected by the areas of critical habitat that remain designated.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has identified this rulemaking action as 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 whether 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.

Under the RFA, as amended, and as understood in the light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies 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 would be directly regulated by this revised critical habitat designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that the revised critical habitat designation will not have a significant economic impact on a substantial number of small entities. Therefore, 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. In our FEA for the December 4, 2012, revised critical habitat designation for the northern spotted owl (77 FR 71876), we did not find that the critical habitat designation would significantly affect energy supplies, distribution, or use. Any administrative costs due to the designation of critical habitat would be reduced because we are excluding additional lands from the designation in this final rule. 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 finding:

(1) This final 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 revised 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 would significantly or uniquely affect small governments because we are only excluding areas from the northern spotted owl's critical habitat designation; we are not designating additional lands as critical habitat for the subspecies. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for northern spotted owl in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the revised designation of critical habitat for northern spotted owl, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this final rule does not have significant federalism effects. A federalism 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 revised critical habitat designation with, appropriate State resource agencies. 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, this final 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. As noted above, the decision set forth in this document removes areas from the designation.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation with the Federal agency under section 7(a)(2) of the Act 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. Further, in this document, we are excluding areas from the northern spotted owl's critical habitat designation; we are not designating additional lands as critical habitat for the subspecies.

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 would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are revising critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the northern spotted owl, the December 4, 2012, final rule (77 FR 71876) identifies the elements of physical or biological features essential to the conservation of the subspecies, and we are not proposing any changes to those elements in this document. The areas we are excluding from the designated critical habitat are described in this rule and the maps and coordinates or plot points or both of the subject areas are included in the administrative record and are available at *https://www.fws.gov/oregonfwo* and at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2020–0050.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. Seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit (see *Catron Cty. Bd. of Comm'rs, New Mexico* v. *U.S. Fish & Wildlife Serv.,* 75 F.3d 1429 (10th Cir. 1996), we do not need to prepare environmental analyses pursuant to 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 in *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995).

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 Indian lands are not subject to the same controls as Federal public lands, to remain sensitive to Tribal culture, and to make information available to Tribes. To fulfill our responsibility under Secretarial Order 3206, we have consulted with the Cow Creek Band of Umpqua Tribe of Indians and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, which both manage Indian land within the areas designated as critical habitat for the northern spotted owl.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Oregon 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, for the reasons discussed above in the preamble, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. Revise the authority citation to part 17 to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.95(b), amend the entry for ''Northern Spotted Owl *(Strix occidentalis caurina)*'' by revising paragraph (7), the second map in paragraph (9), and paragraphs (10), (14), (16), (17), and (18) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

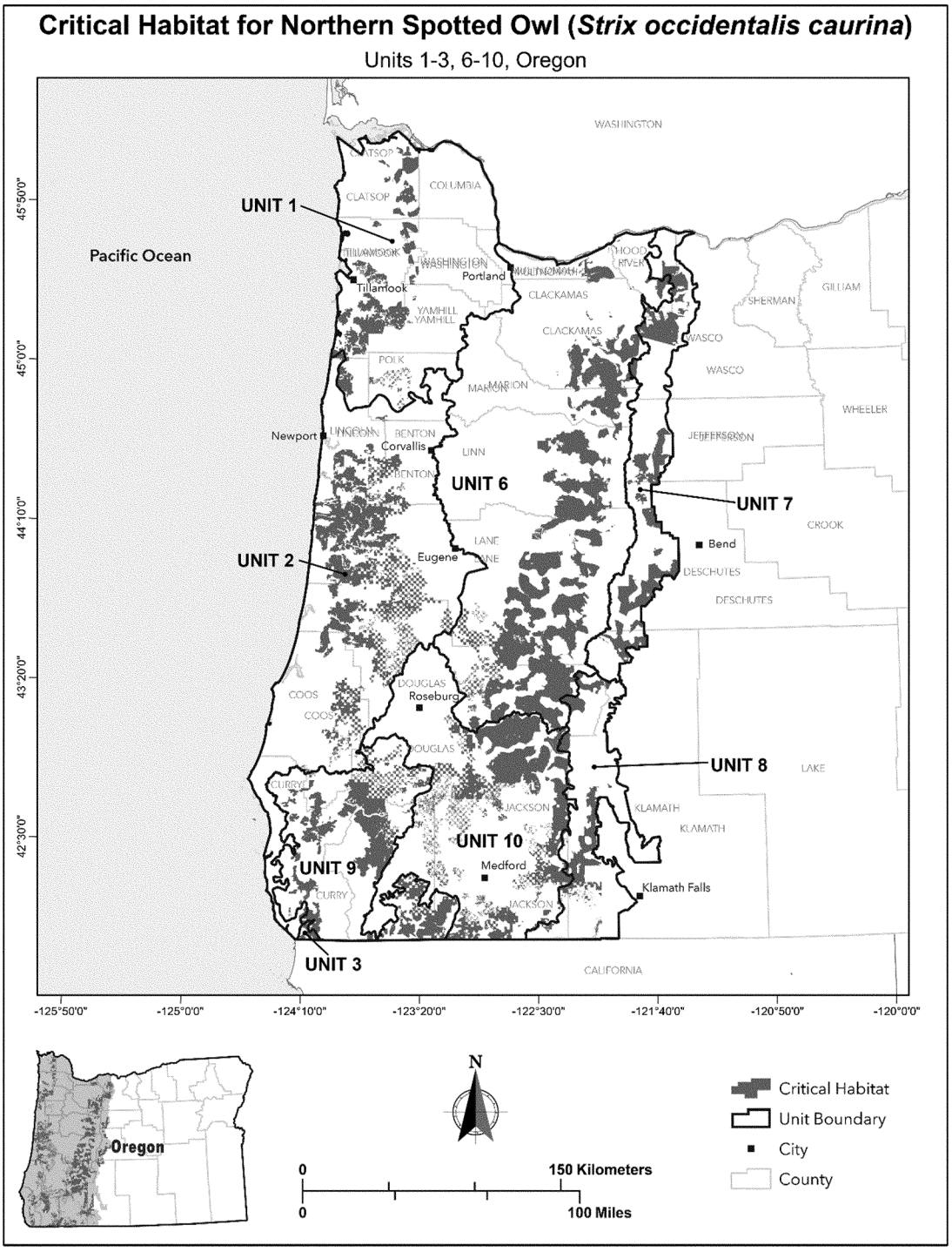
(b) *Birds.*

* * * * *

Northern Spotted Owl (Strix occidentalis caurina)

* * * * *

(7) *Note:* Index map of critical habitat units for the northern spotted owl in the State of Oregon follows: Figure 2 to Northern Spotted Owl *(Strix occidentalis caurina)* paragraph (7)



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(9) Unit 1: North Coast Ranges and Olympic Peninsula, Oregon and Washington. Maps of Unit 1: North Coast Ranges and Olympic Peninsula, Oregon and Washington, follow:

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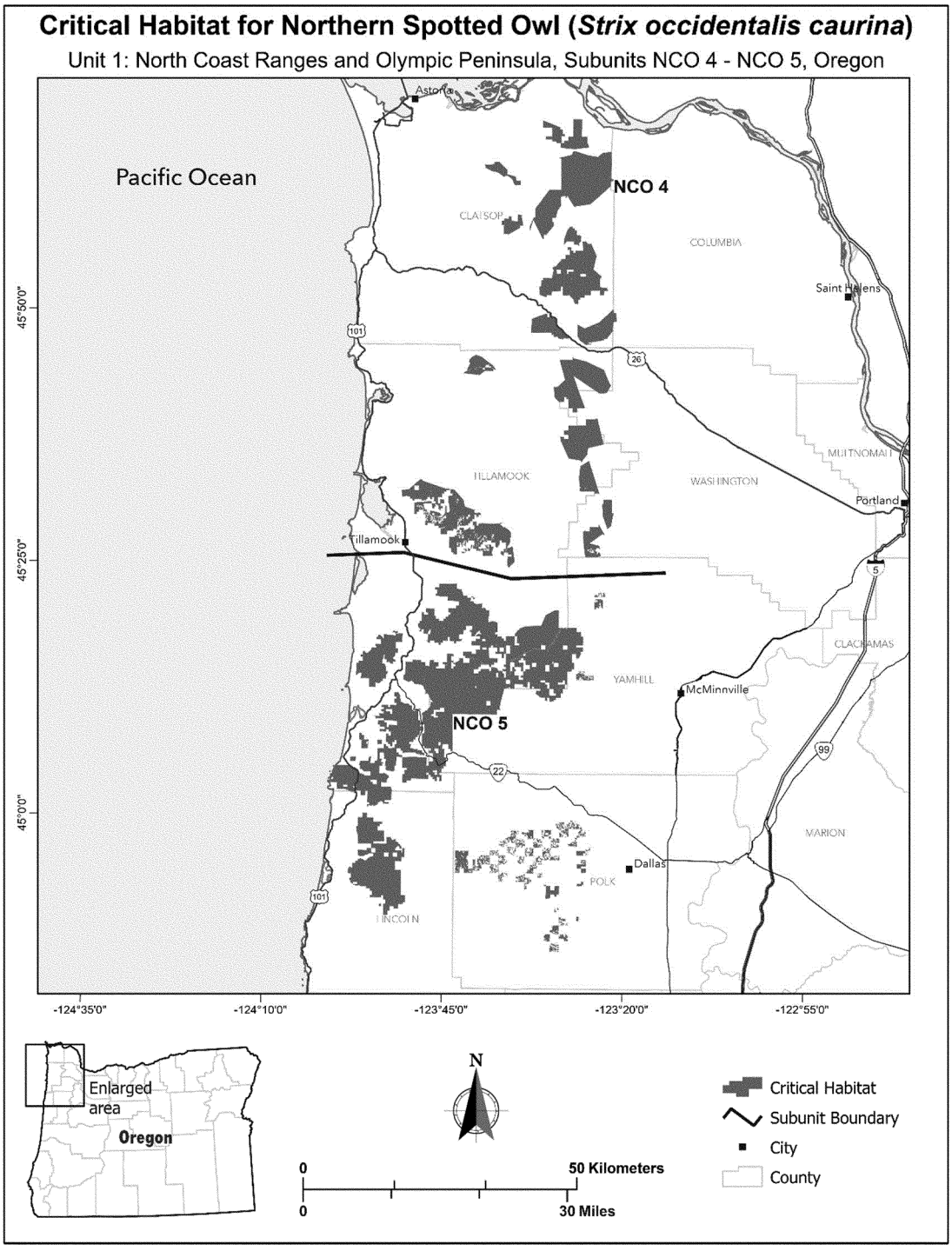
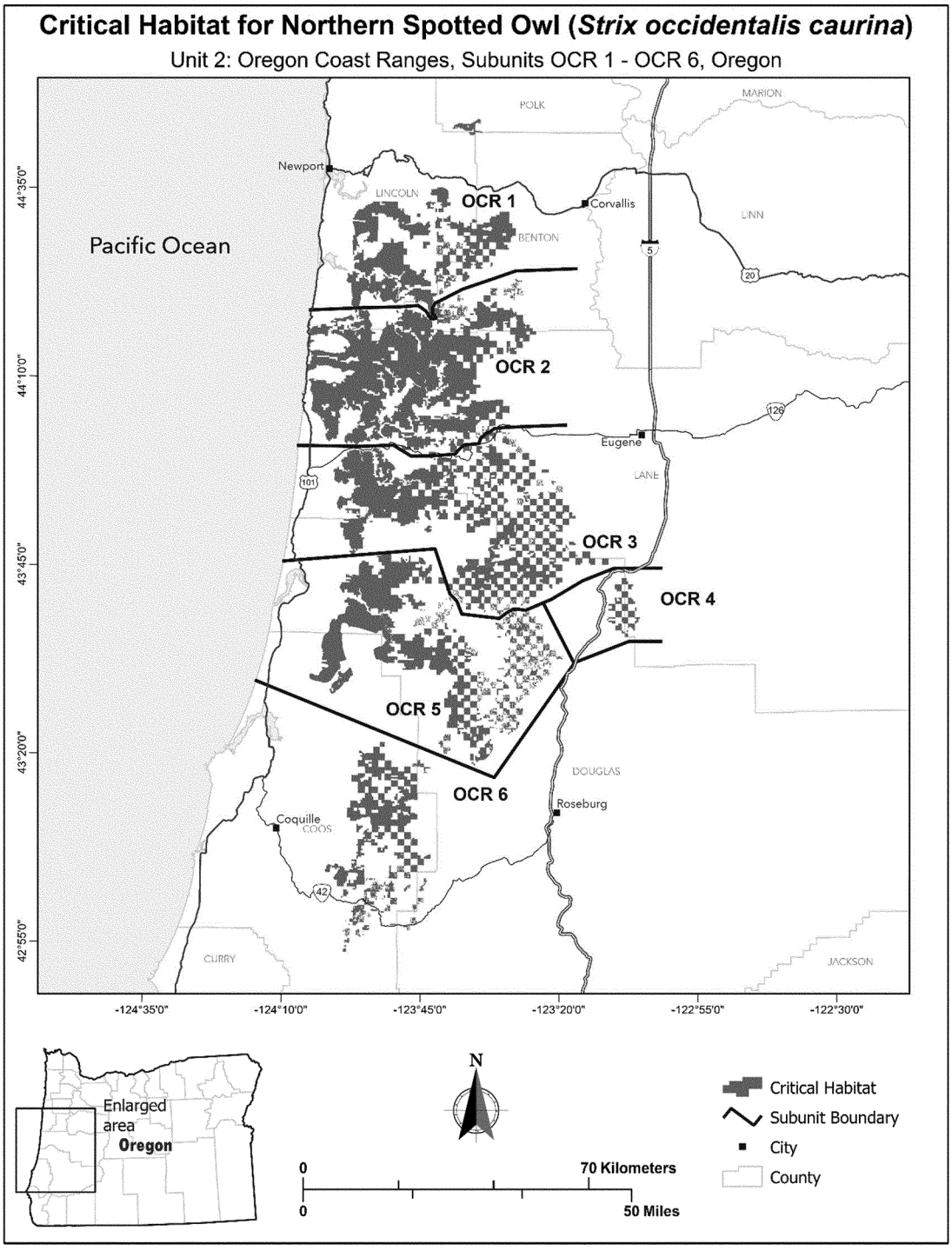
Figure 5 to Northern Spotted Owl *(Strix occidentalis caurina)* paragraph (9)



(10) Unit 2: Oregon Coast Ranges, Oregon. Map of Unit 2, Oregon Coast Ranges, Oregon, follows:

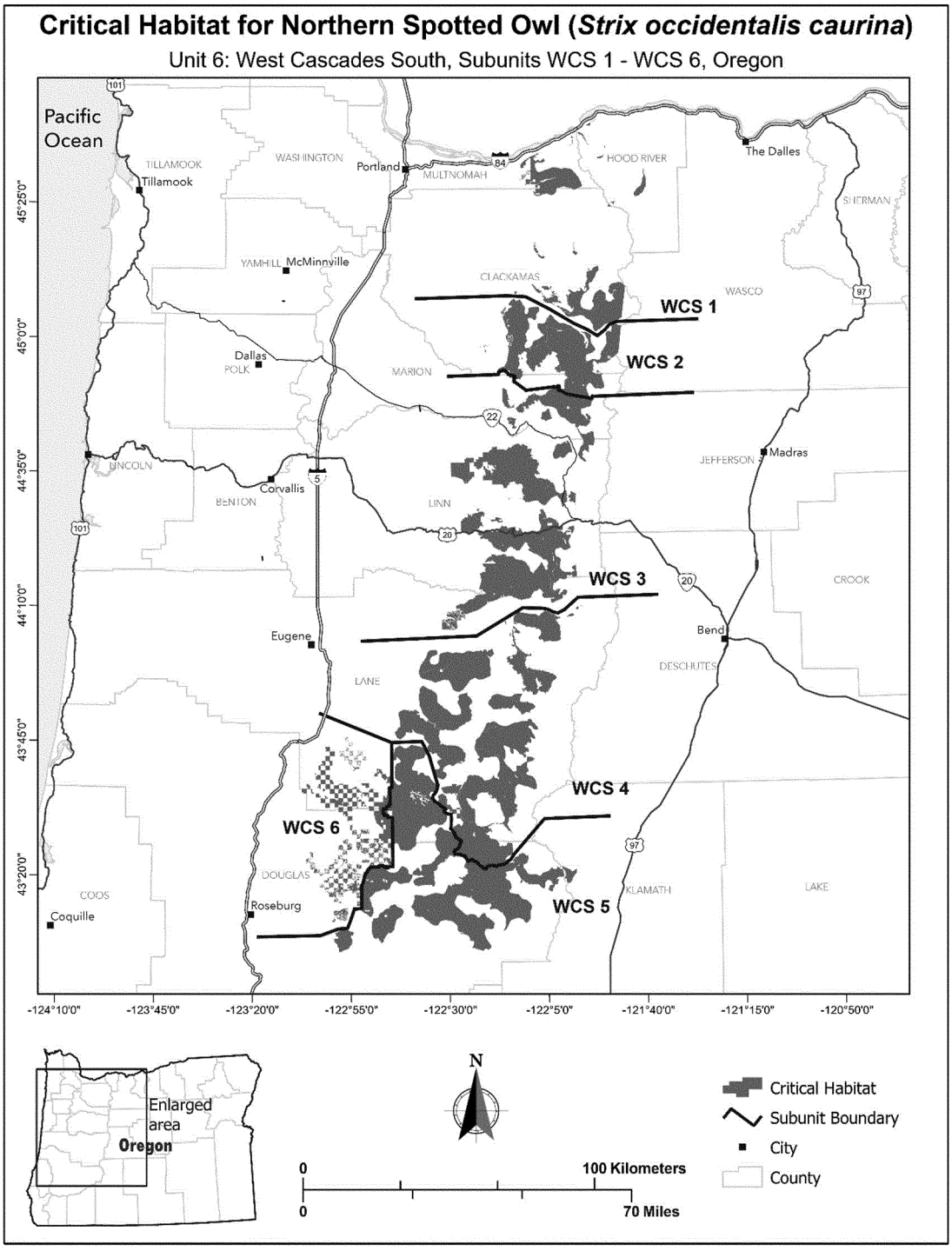
Figure 6 to Northern Spotted Owl *(Strix occidentalis caurina)* paragraph (10)



* * * * *

(14) Unit 6: West Cascades South, Oregon. Map of Unit 6, West Cascades South, Oregon, follows:

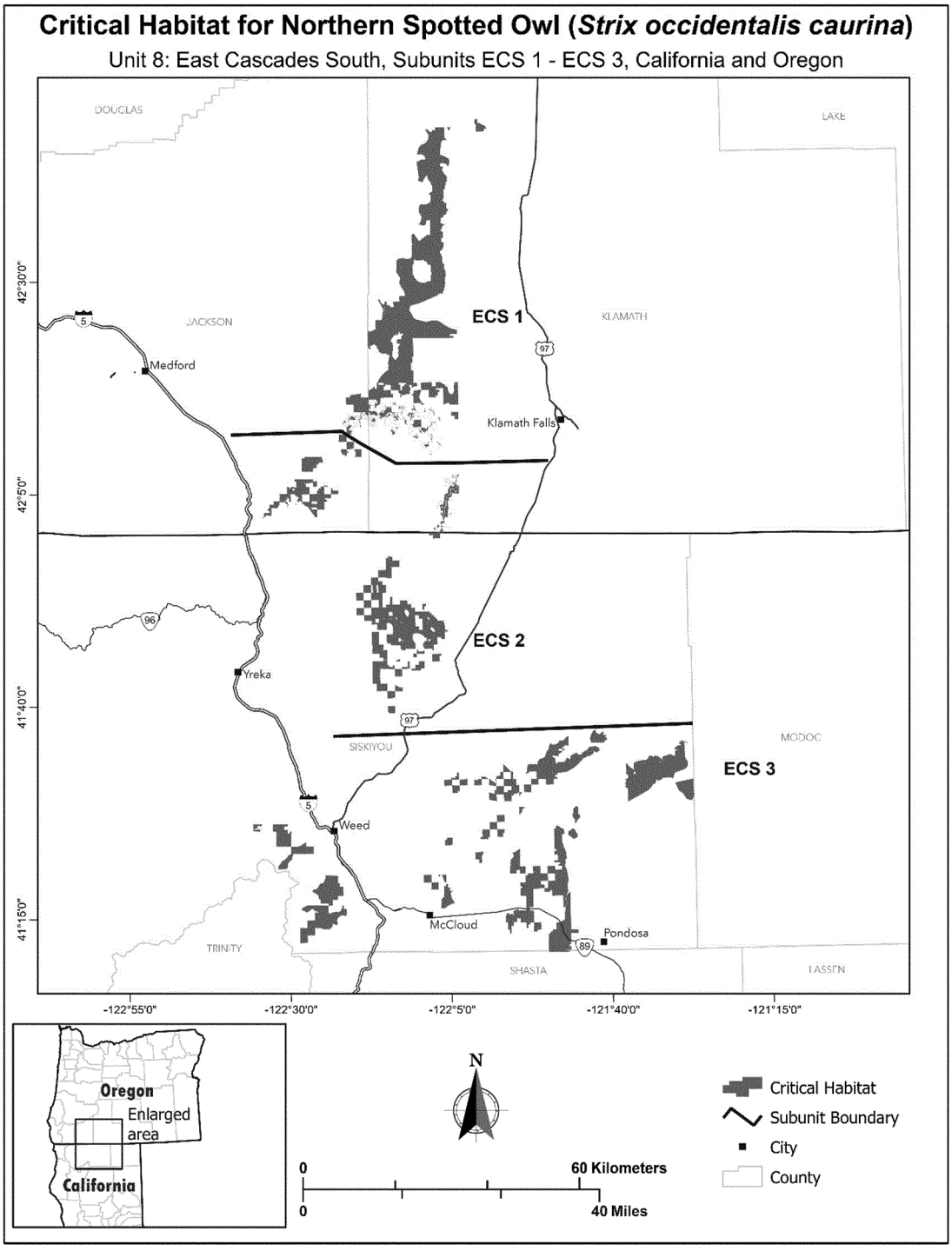
Figure 10 to Northern Spotted Owl *(Strix occidentalis caurina)* paragraph (14)



* * * * *

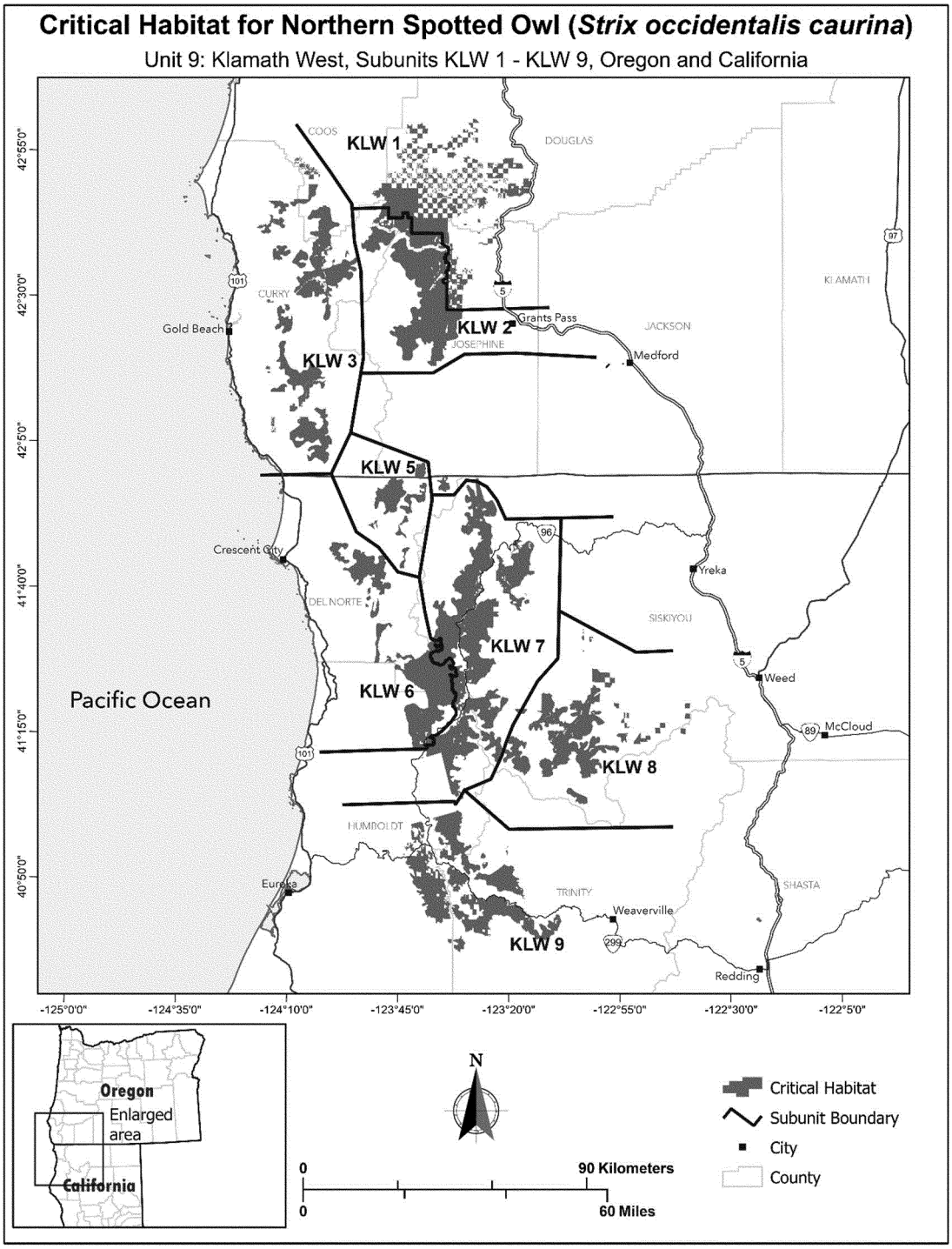
(16) Unit 8: East Cascades South, California and Oregon. Map of Unit 8, East Cascades South, California and Oregon, follows:

Figure 13 to Northern Spotted Owl *(Strix occidentalis caurina)* paragraph (16)



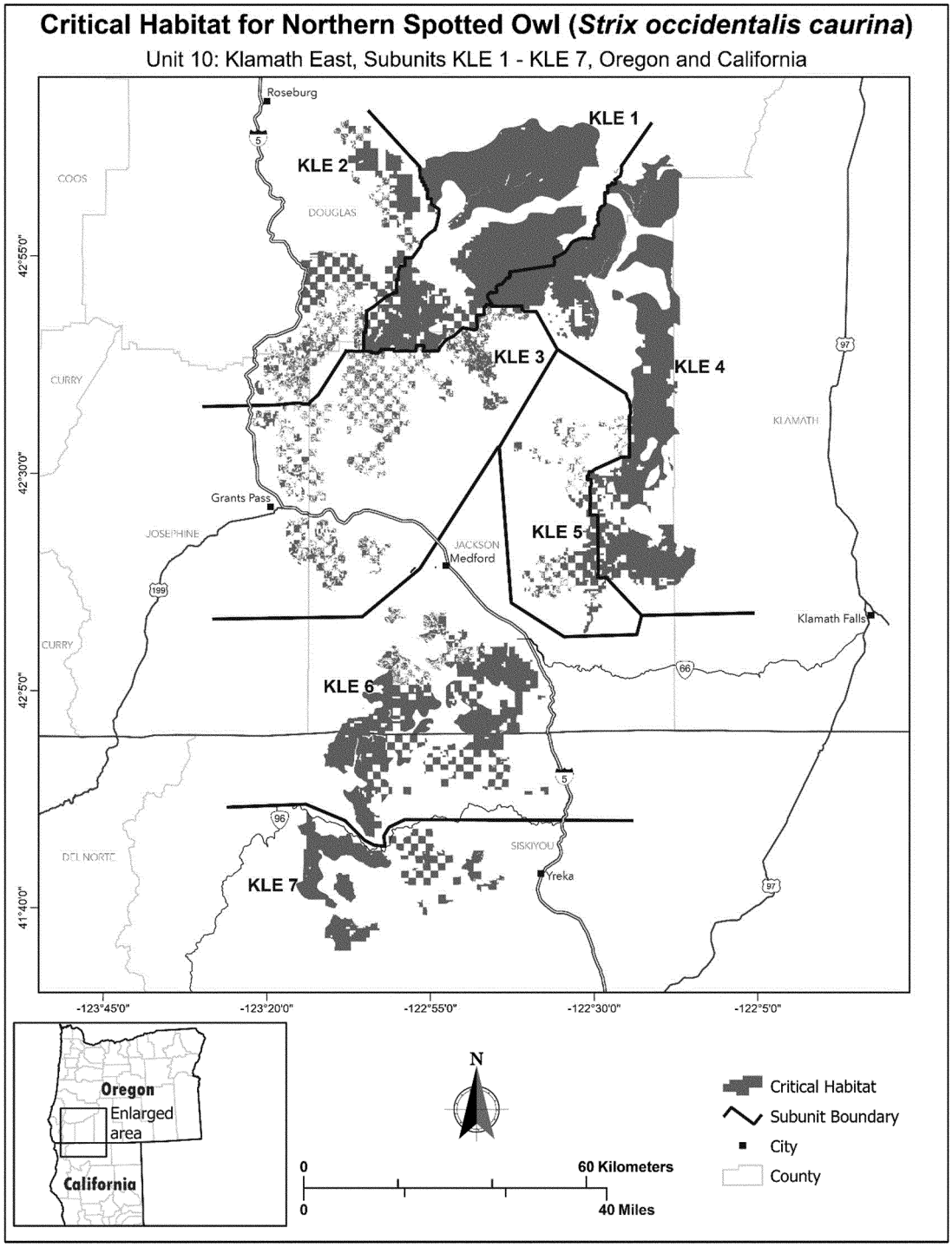
(17) Unit 9: Klamath West, Oregon and California. Map of Unit 9: Klamath West, Oregon and California, follows:

Figure 14 to Northern Spotted Owl *(Strix occidentalis caurina)* paragraph



(18) Unit 10: Klamath East, California and Oregon. Map of Unit 10: Klamath East, California and Oregon, follows:

Figure 15 to Northern Spotted Owl *(Strix occidentalis caurina)* paragraph



* * * * *

Martha Williams,

Principal Deputy Direcctor, Exercising the Delegated Authority of the Director.

[FR Doc. 2021–24365 Filed 11–9–21; 8:45 am]

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FEDERAL REGISTER

Vol. 86 Wednesday,
No. 215 November 10, 2021

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status With a Section 4(d) Rule for Bracted Twistflower and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0013; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BE44

Endangered and Threatened Wildlife and Plants; Threatened Species Status With a Section 4(d) Rule for Bracted Twistflower and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the bracted twistflower (*Streptanthus bracteatus*), a plant species from Texas, as a threatened species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list bracted twistflower as a threatened species with a rule issued under section 4(d) of the Act (a ''4(d) rule''). We also propose to designate critical habitat for the bracted twistflower under the Act. In total, approximately 1,606 acres (650 hectares) in Uvalde, Medina, Bexar, and Travis Counties in Texas fall within the boundaries of the proposed critical habitat designation. In addition, we announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the bracted twistflower. If we finalize this rule as proposed, it would extend the Act's protections to this species and its critical habitat.

DATES: We will accept comments received or postmarked on or before January 10, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by December 27, 2021.

ADDRESSES:

Written comments: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the docket number or RIN for this rulemaking (presented above in the document headings). For best results, do not copy and paste either number; instead, type the docket number or RIN into the Search box using hyphens. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2021–0013, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file and are available at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2021–0013, and at the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for the critical habitat designation will also be available at the Service website 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: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512–490–0057. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species is an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does. We propose to list the bracted twistflower as a threatened species with a species-specific 4(d) rule under the Act. We also propose to designate critical habitat for the species.

The basis for our action. Under section 4(a) of the Act, we may determine that a species is an endangered or threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the primary threats to the bracted twistflower are loss of habitat due to urban and residential development, changes in structure and composition of vegetation and wildfire frequency, and herbivory by dense populations of white-tailed deer (*Odocoileus virginianus*) and introduced ungulates.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native

American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Information on regulations that are necessary and advisable to provide for the conservation of the bracted twistflower and that the Service can consider in developing a 4(d) rule for the species. In particular, information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether we should consider any additional exceptions from the prohibitions in the 4(d) rule.

(6) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

(7) Specific information on:

(a) The amount and distribution of bracted twistflower habitat;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Any additional areas occurring within the range of the species [*i.e.,* Travis, Medina, Uvalde, Bexar, Hays Counties] that should be included in the designation because they (1) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (2) are unoccupied at the time of listing and are essential for the conservation of the species;

(d) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(e) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments:

(i) Regarding whether occupied areas are adequate for the conservation of the species;

(ii) Providing specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species.

(iii) Explaining whether or not unoccupied areas fall within the definition of ''habitat'' at 50 CFR 424.02 and why.

(8) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(10) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. If you think we should exclude any additional areas, please provide credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion.

(12) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information

we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, and may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

In 1975, the Smithsonian Institution presented a report to Congress describing over 3,000 vascular plants considered endangered, threatened, or extinct in the United States, including the bracted twistflower. The Service published a notice on July 1, 1975 (40 FR 27824), in which we announced that this report had been accepted as a petition under the terms of the Act, and that the taxa named in the report and notice were being reviewed for possible inclusion in the List of Endangered and Threatened Plants.

On December 15, 1980, we classified the bracted twistflower as a Category 2 candidate for listing (45 FR 82480). We defined Category 2 candidates as taxa for which information in the Service's possession indicated the probable appropriateness of listing as endangered or threatened, but for which sufficient information was not available to biologically support a proposed rule at the time. The species remained so designated in subsequent candidate notices of review (CNORs) (50 FR 39526, September 27, 1985; 55 FR 6184, February 21, 1990; 58 FR 51144, September 30, 1993). In the February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of Category 2 species as candidates; therefore, the bracted twistflower was no longer a candidate species.

On October 26, 2011, we added bracted twistflower to the candidate list (76 FR 66370). Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which preparation and publication of a proposal is precluded by higher priority listing actions. Bracted twistflower was included in all subsequent annual CNORs with a listing priority number of 8, which reflects a species with threats that are ongoing and imminent (77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016; 84 FR 54732, October 10, 2019; 85 FR 73164, November 16, 2020).

On August 5, 2014, we received a petition to list the bracted twistflower. Because the species was already on our candidate list, we took no additional action on the petition.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the bracted twistflower. The SSA team was composed of Service biologists in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 20, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of six appropriate specialists regarding the SSA. We received one response. We also sent the SSA report to four partners, including scientists with expertise in local plant species, for review. We received review from four partners (Texas Parks and Wildlife Department, the City of Austin, the City of San Antonio, and Joint Base San Antonio).

I. Proposed Listing Determination

Background

Bracted twistflower is an annual herbaceous plant in the mustard family (Brassicaceae) that occurs only along the southeastern edge of the Edwards Plateau of central Texas. There are currently 35 described species of *Streptanthus.* Bracted twistflower can be distinguished from most other members of this genus because the leaves borne on the flower stalk lack stems and all flower stems have a small modified leaf, called a bract, at their bases.

Bracted twistflower habitats occur near the boundary between the Edwards or Devils River limestone formations and the Glen Rose limestone formation. Individual plants commonly occur near or under a canopy of Ashe juniper (*Juniperus ashei*), Texas live oak (*Quercus fusiformis*), Texas mountain laurel (*Sophora secundiflora*), Texas red oak (*Quercus buckleyi*), or other trees.

The seeds germinate in response to fall and winter rainfall, forming basal rosettes, and the flower stalks emerge the following spring bearing showy, lavender-purple flowers. The seed capsules remain attached to the stalks during the summer as they mature and dehisce, releasing the seeds to be dispersed by gravity. The foliage withers as the fruits mature, and the plants die during the heat of summer. This species is primarily an outcrossing species; the leafcutter bee *Megachile comata* (family: Megachilidae) is known to be an effective pollinator. Because the seeds of bracted twistflower do not disperse far, gene flow for this species occurs mainly through pollination.

Since 1989, populations of the bracted twistflower have been documented at 17 naturally occurring element occurrences (EOs) in five counties, as well as one experimental trial in Travis County (see Table 1, below). We have adopted the EO standard to maintain consistency with the Texas Parks and Wildlife Department's Natural Diversity Database (TXNDD) and because the EOs used in the TXNDD are practical approximations of populations, based on the best available scientific information. Each EO may consist of one to many Source Features, which are specific locations where one or more

individuals have been observed one or more times.

Bracted twistflower is an annual plant, and the numbers of individuals that germinate at the Source Features of each EO vary widely from year to year in response to weather patterns or other stimuli. Thus, the numbers observed in any single year are not useful measures of population size because they do not reveal the numbers of live, dormant seeds that persist in the soil seed reserve. The SSA report (Service 2021, appendix A) describes the method we used to estimate the potential population sizes of EOs, which we define as the largest numbers of individuals that have been observed at each Source Feature of each EO. We then used aerial imagery to determine whether the habitat of any Source Features had been destroyed by construction of roads, buildings, or other disturbance, and we calculated the estimated remaining potential population at each EO. For a complete descriptions of the analysis used, see the SSA report. Table 1 lists the total potential populations of each EO and the proportions of each that were reported from Source Features that were destroyed, partially destroyed, or are still intact. In summary, within the naturally-occurring EOs, we determined that habitats and potential populations are completely intact at 11 EOs, partially destroyed at four EOs, and completely destroyed at two EOs. However, even where habitats are intact, populations may decline due to ungulate herbivory, juniper competition, or other factors. A thorough review of the taxonomy, life history, and ecology of the bracted twistflower is presented in the SSA report (Service 2021, entire).

TABLE 1—BRACTED TWISTFLOWER ELEMENT OCCURRENCES (EOS), POTENTIAL POPULATION SIZES (NUMBERS OF INDIVIDUALS), AND HABITAT STATUSES OF SOURCE FEATURES

EO—site name; owner; representation area [1]	Total potential population of all source features	Potential population by habitat status			Percent remaining intact
		Intact	Destroyed	Partially destroyed	
2—Cat Mountain (Far West); Private; NE	866	123	112	631	14.2
7—Ullrich Water Treatment Plant (Bee Creek Preserve); City of Austin; NE	493	493	0	0	100.0
9—Mt. Bonnell/Mt. Bonnell City Park; Private/City of Austin; NE	919	237	433	249	25.8
17—Barton Creek Wilderness Park; City of Austin (Balcones Canyonlands Preserve (BCP)); NE	1,677	1,677	0	0	100.0
21—Mesa-FM 2222; Private; NE	330	0	70	260	0.0
26—Bright Leaf State Natural Area (SNA); Austin Community Foundation; NE	10	10	0	0	100.0
32—Rough Hollow Ranch; Private; NE	40	0	40	0	0.0
33 [2]—Vireo Preserve (experimental reintroduction); City of Austin (BCP); NE	120	.....	.....	.....	.....
35—Valburn Drive/Bull Creek District Park; Private/City of Austin; NE	1,041	343	644	54	32.9
36—Gus Fruh/Barton Creek Greenbelt; City of Austin; NE	29	29	0	0	100.0
xx [3]—Falls Ranch; Private; NE	6	6	0	0	100.0
8—E Medina Lake; Texas Department of Transportation, Medina County, and private rights-of-way; C	2,260	477	481	1,302	21.1
18—Medina Lake; Private; C	1,254	1,254	0	0	100.0
23—Eisenhower City Park/Camp Bullis Military Training Reservation; City of San Antonio/Dept. of Defense; C	190	190	0	0	100.0
25—Laurel Canyon (Bear Bluff); Private Limited Partnership with City of San Antonio conservation easement; C	2,000	2,000	0	0	100.0
31—Rancho Diana (undeveloped natural area); City of San Antonio; C	958	958	0	0	100.0
10—Garner State Park; Texas Parks and Wildlife Department; W	686	686	0	0	100.0
24—Upper Long Canyon; Private; W	5	5	0	0	100.0

[1] Described under Species Needs, below. NE = northeast; C = central; W = west.
[2] This experimental reintroduction is not one of the 17 naturally-occurring EOs.
[3] This newly-discovered site does not yet have in EO ID or EO number in the TXNDD.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an endangered species as a species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range''. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and

conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, and other demographic factors.

Analytical Framework

The SSA report (Service 2021, entire) documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R2–ES–2021–0013 on *http://www.regulations.gov.*

To assess bracted twistflower viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the factors that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. We analyze these factors both individually and cumulatively to determine the current condition of the species and project the future condition of the species under several plausible future scenarios.

Species Needs

Habitat Availability and Protection From Herbivory

Bracted twistflower habitat occurs on karstic, porous limestones near the boundary of the Devils River or Edwards formations and Glen Rose formations in central Texas. These juniper-oak woodlands and shrublands experience hot, often dry summers and mild winters with bimodal (spring and fall) precipitation patterns. Optimal microsites for the bracted twistflower have less than 50 percent cover of woody plant canopy with the most robust plants growing in full sun (Fowler 2010, pp. 10–12; Leonard 2010, pp. 30–32; Ramsey 2010, pp. 10–13, 20; Leonard and Van Auken 2013, pp. 276–285). However, in areas with dense populations of white-tailed deer and other herbivores, few individuals survive except where they are protected from herbivory by a cover of dense, spiny understory vegetation (McNeal 1989, p. 17; Damude and Poole 1990, pp. 29 –30; Poole *et al.* 2007, p. 470; Leonard 2010, p. 63).

Reproduction

Bracted twistflower is an annual species sustained through its reserve of

seeds in the soil. Thus, resilient populations must produce more viable seeds than they lose through germination, herbivory, and loss of viability. Individuals that have begun flowering are vulnerable to herbivory by white-tailed deer, squirrels, and other herbivores, including introduced ungulates; although robust plants may generate a new flower stalk after the first stalk is removed, the loss of resources likely reduces reproductive output and a decrease in resiliency.

Bracted twistflower reproduces primarily by outcrossing between individuals that are not closely related; self-pollination produces only small amounts of seeds. Fertilization requires that two or more sexually compatible individuals are located within the forage range of native bee pollinators. The longevity of seed viability has not been determined, although at least some seeds remain viable in the soil for at least 7 years (Service 2021, p. 12). The known pollinators of bracted twistflower are leafcutter bees (*Megachile* spp.) (Dieringer (1991, pp. 341–343), which have an estimated forage range of 600 meters to 3 kilometers (0.37 to 1.86 miles) (Mitchell 1936, pp. 124–125; Gathmann and Tscharntke 2002, pp. 760–761; Greenleaf *et al.* 2007, p. 593; Discover Life 2019); sweat bees (family *Halictidae*) may also be effective pollinators (Service 2021, p. 5), but due to their smaller size have correspondingly smaller forage ranges. Sexual reproduction also increases genetic diversity, and thus representation, which allows populations to be more likely to adapt and survive when confronted with new pathogens, competitors, and changing environmental conditions. For these reasons, successful reproduction likely requires clustering of genetically diverse individuals within habitats that also support leafcutter bees, sweat bees, and other native bee species.

Fall and winter rainfall stimulate bracted twistflower seed germination; successive rainfall events that allow soil moisture to persist may have greater effect than one or two heavy rains. In addition to rain, other factors appear to stimulate germination, such as the removal of competing vegetation, and possibly fire during a previous season.

Minimum Viable Population Size

Populations of bracted twistflower must be large enough to have a high probability of surviving a prescribed period of time. For example, Mace and Lande (1991, p. 151) propose that species or populations be classified as vulnerable when the probability of persisting 100 years is less than 90 percent. This metric of population resilience is called minimum viable population (MVP). We adapted the method published in Pavlik (1996, p. 137) to estimate an MVP for bracted twistflower of about 1,800 individuals. This estimate of MVP is based only on numbers of mature, flowering individuals because juveniles that die before they reproduce do not contribute to the effective population size or future genetic diversity.

Current Condition

Our assessment of the current species viability of bracted twistflower is based on its resiliency, redundancy, and representation. We ranked the current conditions of bracted twistflower EOs as high, medium, low, or extirpated based on the following characteristics: The proportion of potential populations where habitat is intact (described above); the population sizes and trends (if known) in remaining intact habitats; genetic diversity and inbreeding coefficients (if known); and the current levels of monitoring, vegetation management, and protection from development, herbivores, and recreational impacts on the remaining intact habitats. The current condition of each EO is based upon the cumulative effects of these factors.

Resiliency

Our review of the TXNDD EO records (TXNDD 2018) indicates that relatively large pulses of bracted twistflower plants emerge in specific areas (Source Features) during relatively few years, while during most years few or no plants emerge. This wide annual variation in germination makes it very difficult to determine the species' population sizes and demographic trends (Service 2021, pp. 22–23, appendix A). However, one indicator of the status of bracted twistflower populations is the condition of their habitats. We define potential population size as the maximum numbers observed in specific areas during ''pulse'' years, when optimal conditions stimulate the greatest amounts of seed germination, establishment, and survival to successful reproduction. Thus, our estimate of the species' status is based in part on the potential populations remaining in intact habitats. The potential total number of individuals at the 17 naturally occurring EOs observed since 1989 is 12,764 (not including 120 planted at the experimental population at EO 33). Since 1989, 14 percent of bracted twistflower habitat (a potential population of 1,780 plants) has been completely destroyed in portions of six EOs; 19 percent of bracted twistflower habitat (a potential population of 2,496 plants) has been partially destroyed in portions of five EOs; and 67 percent (a potential population of 8,488 plants) remains intact in portions of 15 naturally occurring EOs (note that each EO can have intact, partially destroyed, and destroyed portions, so the total is greater than the number of EOs). Nevertheless, this estimate reflects only the losses due to habitat development, and does not account for populations that may have declined due to excessive herbivory or juniper competition.

Only four of the remaining EOs have potential populations of at least 50 percent of the estimated MVP value of 1,800 individuals. These medium resilient populations are Barton Creek Greenbelt and Wilderness Park (EO 17) and Rancho Diana (EO 31), which are protected natural areas managed by the City of Austin and City of San Antonio, respectively; Laurel Canyon (EO 25) is protected from development and land use change through a City of San Antonio conservation easement; and landowners voluntarily conserve a portion of Medina Lake (EO 18). The City of Austin also protects Ullrich (EO 7) from development and land use change (Texas Parks and Wildlife Department 2018, p. 1), although the potential maximum population is about 27 percent of the estimated MVP level. Gus Fruh (EO 36) is small, but due to its proximity to EO 17 along Barton Creek, might be considered part of a Barton Creek metapopulation. Mt. Bonnell City Park (EO 9), Garner SP (EO 10), Eisenhower City Park (EO 23), Valburn/Bull Creek District Park (EO 35), and Falls Ranch (no EO number) are all currently far below the MVP level. Four EOs have been mostly lost to development: Cat Mountain (EO 2), East Medina (EO 8), Mt. Bonnell City Park, and Valburn/Bull Creek. Two EOs have been completely lost to development: Mesa (EO 21) and Rough Hollow (EO 32). No individuals have been seen in recent years at two additional EOs, Bright Leaf (EO 26) and Upper Long Canyon (EO 24), nor at the experimental population at Vireo Preserve (EO 33). In summary, none of the EOs of bracted twistflower have reached the MVP level in the last decade, most have low resiliency, many have gradually declined over the years that they have been monitored, and six EOs have been extirpated or very nearly extirpated.

Redundancy and Representation

Bracted twistflower currently possesses significant genetic diversity at the species level, but populations are genetically distinct and there is no gene

flow between most populations (Pepper 2010, p. 11). However, of the 10 EOs assessed by Pepper, low levels of genetic diversity occurred in all or parts of four EOs (40 percent), and all or parts of five EOs (50 percent) had high levels of inbreeding; low genetic diversity and inbreeding were more prevalent in smaller, more isolated populations (Pepper 2010, pp. 13, 15). Therefore, although the species still possesses adequate genetic and ecological representation, many of its populations are at risk, due to small population sizes, low levels of genetic diversity, lack of gene flow, and inbreeding.

Representation areas are sectors of a species' geographic range where important constituents of its genetic and ecological diversity occur. The known EOs of bracted twistflower are clustered in three geographic areas separated from each other by 50 km (30 mi) or more. Slight differences in day length, solar elevation, temperature, and precipitation occur over the species' range from northeast to southwest. Austin has more moderate summer and winter temperatures, 40 percent fewer days of freezing weather, and 40 percent greater annual rainfall, compared to Uvalde County. These climate differences also create variation in the structure and composition of associated vegetation. Pepper (2010, pp. 4, 15) identified major, distinct clusters of genetic diversity in Medina County and in the Austin area . Based on this genetic data and the geographic clustering of populations, we identified three representation areas in the northeastern, central, and western portions of the species' range (Service 2021, Figure 9).

Two EOs are extirpated (EO 21 and EO 32), and five EOs have low condition ranks and negligible contributions to redundancy. The northeast representation area has six EOs with high or medium condition ranks, conferring an intermediate degree of population redundancy within this area. The central representation area also has intermediate redundancy, because it has four EOs with high- or medium-condition ranks. In the west representation area, only EO 10 has a medium condition rank, and no population pulses have been observed there in recent years. This representation area appears to have very low redundancy; however, few surveys have been conducted in that area, so undiscovered populations might still exist.

In summary, bracted twistflower has four EOs with medium resiliency and no highly resilient EOs. Two representation areas have intermediate redundancy. Genetic representation at the species level is adequate, but 40 to 50 percent of EOs had low genetic diversity and high inbreeding, and inbreeding also occurred in three larger populations. The species has lost all or parts of six EOs and one-third of its potential population size over the last 30 years.

Risk Factors

A primary driver of the bracted twistflower's status is habitat loss due to urban and residential land development (McNeal 1989, p. 17; Damude and Poole 1990, p. 51; Zippin 1997, p. 229; Fowler 2010, p. 2; Pepper 2010, p. 5). A number of cities, including Austin, San Marcos, New Braunfels, and San Antonio, were established along the Balcones Escarpment due to the prevalence of springs. This area, known as the Interstate 35 corridor, is one of the fastest-growing urban complexes in the United States. Urban development reduces the redundancy and representation of the bracted twistflower and has consumed all or most of the habitat at six EOs of the bracted twistflower.

Habitat changes leading to lower sunlight intensity in the existing habitat are another threat to the bracted twistflower as growth and reproduction of the species, and thus resilience, increases with higher light intensity and duration (Fowler 2010, pp. 1–18; Leonard 2010, pp. 1–86; Ramsey 2010, pp. 1–35; Leonard and Van Auken 2013, pp. 276–285). Bracted twistflower habitats have likely experienced a decline in the frequency of wildfire, which has allowed Ashe juniper and other woody plant cover to increase within most bracted twistflower populations (Bray 1904, pp. 14–15, 22–23; Fonteyn *et al.* 1988, p. 79; Fowler *et al.* 2012, pp. 1518–1521). These increases in woody plant cover reduce the growth and reproduction of bracted twistflowers.

Severe herbivory by white-tailed deer and introduced ungulates is a significant factor affecting the status of bracted twistflower throughout the species' range, except where populations are protected from deer by fencing or through intensive herd management (McNeal 1989, p. 17; Damude and Poole 1990, pp. 52–53; Dieringer 1991, p. 341; Zippin 1997, pp. 39–197, 227; Leonard 2010, pp. 36–43; Fowler 2014, pp. 17, 19). Herbivory is exacerbated by the extremely high deer densities in the Edwards Plateau of Texas (Zippin 1997, p. 227).

Both permitted and unauthorized recreation affects the species' survival at several protected natural areas, as well as on private lands. Hiking and mountain bike trails have impacted the populations at Mt. Bonnell City Park, Barton Creek Preserve, Garner State Park, and Bull Creek Park through trampling of the herbaceous vegetation and severe soil erosion where trails cut directly through occupied habitat (McNeal 1989, p. 19; Fowler 2010, p. 2; Bracted Twistflower Working Group 2010, p. 3; Pepper 2010, pp. 5, 15, 17).

Small, isolated populations are less resilient and more vulnerable to catastrophic losses caused by random fluctuations in recruitment or variations in rainfall or other environmental factors (Service 2016, p. 20). Small populations are also less able to overwhelm herbivores to ensure replenishment of the soil seed reserve (Service 2021, p. 33). In addition to population size, it is likely that population density also influences population viability, because reproduction requires genetically compatible individuals to be clustered within the forage range of the native bee pollinators (Service 2021, p. 33). Small, reproductively isolated populations are also more susceptible to the loss of genetic diversity, genetic drift, and inbreeding (Barrett and Kohn 1991, pp. 3–30). This may reduce the ability of the species or population to resist pathogens and parasites, adapt to changing environmental conditions, or colonize new habitats. More than half of the EOs observed since 1989 are at risk due to the demographic consequences of small population sizes (significantly below the estimated MVP level of 1,800 individuals), and many of the remaining populations have very little genetic diversity and relatively high levels of inbreeding (Pepper 2010, pp. 13, 15). The species as a whole still possesses significant genetic diversity (Pepper 2010, pp. 4, 11, 15), but several of the core reservoirs of the species' genetic diversity occur on private lands and may be lost to development.

Projections of the Species Future Viability

The SSA projects viability during two future periods, from 2030 to 2040 and from 2050 to 2074. We chose these time frames because they represent the likely minimum and maximum lengths of time that seeds could remain viable in the soil, and therefore the potential of declining EOs to recover from viable seeds in the soil seed reserve. Although we do not know the maximum length of time that bracted twistflower seeds can remain viable in the soil seed reserve, observations of the experimental population at Vireo Preserve reveal that at least some seeds are viable after seven

years. Beale's seed viability experiment, begun in 1879, found that 60 percent of annual and biennial plant species still germinated after 15 years in the soil; but by 35 and 50 years, viable seeds persisted for only 30 percent and 25 percent of the species, respectively (Telewski and Zeevart 2002, p. 1286). Based on the Vireo Preserve observations and the Beale experiment, it is likely that bracted twistflower EOs could be restored after 10 or even 20 years without replenishment. Conversely, it is also likely that the soil seed reserve would be completely depleted after 50 years.

The projections of future viability also considered three different scenarios representing an improvement over current conditions, continuation of current trends, or deterioration beyond current conditions. These scenarios were based on seven components that influence this species' status and their cumulative effects on the species: The extent of conservation support, effects of regional development, survey results, documentation of the geographic range, effectiveness of habitat management, effectiveness of population management, and effects of climate changes. Table 2 summarizes the projected species viability during each of the two time frames and under each of the three scenarios. Under the ''improvement'' scenario, the number of EOs in high condition, currently 5, would increase to 10 by 2030–2040 and to 13 by 2050–2074 leading to an increase in species' resiliency. In this scenario species' redundancy and representation remain stable. Under the ''continue'' scenario, the number of extirpated EOs would increase to four by 2030–2040 and to 10 by 2050–2074 leading to a loss of redundancy. Both EOs in the West Representation Area would be extirpated by 2050–2074 leading to a reduction in species' representation. Conditions within 15 EOs would deteriorate under this scenario, leading to a reduction in species' resiliency. The ''deterioration'' scenario projects extirpation of 11 and 15 EOs during these periods, respectively, leading to a significant reduction in species redundancy and representation. By 2050–2074 all EOs in the West Representation area would be extirpated with only two remaining in the Northeast Representation Area and one in the Central Representation Area. Under this scenario, species resiliency declines across all sites. For more information, see the bracted twistflower SSA report (Service 2021, pp. 51–66). These scenarios should not be interpreted as mutually exclusive. The components of the scenarios will interact independently; future viability will likely result from a combination of conditions analyzed in these scenarios. For example, conservation support and habitat management could be better than expected by 2050, but climate changes and regional growth could have more severe impacts than expected.

TABLE 2—PROJECTED VIABILITIES OF BRACTED TWISTFLOWER DURING TWO FUTURE TIME FRAMES AND UNDER THREE SCENARIOS

EO No.	Current condition rank	Future scenarios		
		Improvement	Current trends continue	Deterioration
		Period/rank	Period/rank	Period/rank
Northeast Representation Area				
2	Low	2030–2040: Low 2050–2074: Medium	2030–2040: Low 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.
7	High	2030–2040: High 2050–2074: High	2030–2040: High 2050–2074: High	2030–2040: Low. 2050–2074: Low.
9	Medium	2030–2040: High 2050–2074: High	2030–2040: Low 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.
17	High	2030–2040: High 2050–2074: High	2030–2040: High 2050–2074: Medium	2030–2040: Low. 2050–2074: Low.
21	Extirpated	2030–2040: Extirpated 2050–2074: Extirpated	2030–2040: Extirpated 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.
26	Low	2030–2040: Medium 2050–2074: Medium	2030–2040: Extirpated 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.
32	Extirpated	2030–2040: Medium 2050–2074: Medium	2030–2040: Extirpated 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.
33	Low	2030–2040: Medium 2050–2074: High	2030–2040: Extirpated 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.
35	Medium	2030–2040: High 2050–2074: High	2030–2040: Low 2050–2074: Low	2030–2040: Low. 2050–2074: Extirpated.
36	High	2030–2040: High 2050–2074: High	2030–2040: Medium 2050–2074: Low	2030–2040: Low. 2050–2074: Extirpated.
xx [1]	Medium	2030–2040: Medium 2050–2074: High	2030–2040: Low 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.
Central Representation Area				
8	Low	2030–2040: Medium	2030–2040: Low 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.
18	Medium	2030–2040: High 2050–2074: High	2030–2040: Medium 2050–2074: Low	2030–2040: Low. 2050–2074: Extirpated.
23	Medium	2030–2040: High 2050–2074: High	2030–2040: Low 2050–2074: Low	2030–2040: Extirpated. 2050–2074: Extirpated.
25	High	2030–2040: High 2050–2074: High	2030–2040: Medium 2050–2074: Low	2030–2040: Low. 2050–2074: Extirpated.
31	High	2030–2040: High 2050–2074: High	2030–2040: High 2050–2074: High	2030–2040: Medium. 2050–2074: Low.

TABLE 2—PROJECTED VIABILITIES OF BRACTED TWISTFLOWER DURING TWO FUTURE TIME FRAMES AND UNDER THREE SCENARIOS—Continued

EO No.	Current condition rank	Future scenarios		
		Improvement	Current trends continue	Deterioration
		Period/rank	Period/rank	Period/rank
West Representation Area				
10	Medium	2030–2040: High 2050–2074: High	2030–2040: Low 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.
24	Low	2030–2040: Medium 2050–2074: High	2030–2040: Low 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.

[1] This newly-discovered site does not yet have in EO ID or EO number in the TXNDD.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts

Ten scientific investigations have been completed that contribute to our knowledge of the phenology, reproduction, habitats, ecology, population biology, and population genetics of bracted twistflower. The Bracted Twistflower Working Group, a consortium of federal, state, and local agencies, researchers, and conservation organizations, has met informally at least annually since 2000 and has worked actively to promote the conservation and recovery of this species. The Service, Texas Parks and Wildlife Department (TPWD), the City of Austin, Travis County, the Lower Colorado River Authority, and the Lady Bird Johnson Wildflower Center established a voluntary Memorandum of Agreement to protect, monitor, and restore bracted twistflower and its habitats on Balcones Canyonlands Preserve (BCP) tracts. Five extant EOs and one experimental population are protected through the agreement, including three of the five populations in a high current condition (Table 2). The City of San Antonio has actively protected and managed EOs at Eisenhower Park and Rancho Diana; the latter continues to be one of the largest remaining populations. The City of San Antonio and The Nature Conservancy own a conservation easement to protect 222 ha (549 ac) in Medina County for watershed conservation; this includes EO 25, which has one of the largest extant bracted twistflower populations. All or parts of 11 EOs are located on state or local conservation land.

Determination of the Bracted Twistflower's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an ''endangered species'' or a ''threatened species.'' The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats and the cumulative effect of the threats under the section 4(a)(1) factors to the bracted twistflower.

Bracted twistflower occurs in three geographically separate representation areas, which experience differing regional climate and biotic factors. Although threats are currently acting on the bracted twistflower throughout its range, 11 EOs were found to have high or medium resiliency for their current condition, and 11 EOs (including one experimental population) occur on protected, state- or locally-owned conservation lands. Thus, after assessing the best available information, we conclude that the bracted twistflower is not currently in danger of extinction throughout all of its range. We therefore proceed with determining whether the bracted twistflower is likely to become endangered within the foreseeable future throughout all of its range.

For the purpose of this determination, the foreseeable future is 50 years, which corresponds to the climate projections used in the analysis. Under the ''current trends continue'' scenario, the number of extirpated EOs increases from two to 10. Under the ''declining'' scenario, 15 EOs will become extirpated, and the condition rank of the remaining three EOs will be low. Development, which results in the permanent loss of habitat, is the most significant threat to bracted twistflower, and this threat is expected to continue into the future. Habitats throughout the species' range have been degraded due to habitat modification and increased browsing pressure from white-tailed deer and introduced ungulates. Threats from habitat loss, habitat modification, increased herbivory, and loss of genetic diversity are cumulative and will likely result in further degradation without management intervention. There is no appreciable gene flow between populations (Pepper 2010, p. 11). Populations of bracted twistflower have declined and are expected to continue to decline into the future. Our analysis

of the species' current and future conditions show that the population and habitat factors used to determine the resiliency, representation, and redundancy of bracted twistflower are likely to continue to decline to the degree that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that provided the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant, and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the bracted twistflower, we choose to address the status question first—we consider information pertaining to the geographic distribution of the species and the threats that the species faces to identify any portions of the range where the species is endangered.

The statutory difference between an endangered species and a threatened species is the time frame in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we reviewed the best scientific and commercial data available regarding the time horizon for the threats that are driving the bracted twistflower to warrant listing as a threatened species throughout all of its range. We considered whether the threats are geographically concentrated in any portion of the species' range in a way that would accelerate the time horizon for the species' exposure or response to the threats. We examined the following threats: Habitat loss to development (Factor A); changes in fire frequency and the composition and structure of vegetation (Factor A); excessive herbivory by white-tailed deer and other ungulates (Factor C); and demographic and genetic consequences of small, isolated populations (Factor E), including cumulative effects.

All of the known threats are present throughout the bracted twistflower's range, but to different degrees in different areas. We identified the western portion of the species' range, consisting of two EOs in Uvalde County, and determined that there is a concentration of threats from browsing of white-tailed deer and other ungulates. These threats are not unique to this area, but are acting at greater intensity here (*e.g.,* larger populations of white-tailed deer and other ungulates). One EO is fairly large in size and is in medium condition with a moderate level of genetic diversity. The other EO within Uvalde County only has data from one observation in 1997, which documented five plants, and is in low condition. Since the larger population in this portion is in medium condition, this portion is not currently in danger of extinction.

Although some threats to the bracted twistflower are concentrated in Uvalde County, the best scientific and commercial data available does not indicate that the concentration of threats, or the species' responses to the concentration of threats, are likely to accelerate the time horizon in which the species becomes in danger of extinction in that portion of its range. As a result, the bracted twistflower is not in danger of extinction now within Uvalde County. Therefore, we determine, that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in Desert Survivors v. Department of the Interior, No. 16-cv-01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and Center for Biological Diversity v. Jewell, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

Determination of Status

Our review of the best scientific and commercial data available indicates that bracted twistflower meets the Act's definition of a threatened species. Therefore, we propose to list the bracted twistflower as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species 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 other countries and calls for recovery actions to be carried out for 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. Section 4(f) of the Act calls for 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 consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. 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 also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to

threatened (''downlisting'') or removal from protected status (''delisting''), 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 website (*http://www.fws.gov/endangered*), or from our Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because 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.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of the bracted twistflower. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the bracted twistflower is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. 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 Federal Highways Administration, U.S.D.A. Natural Resources Conservation Service, U.S. Army Corps of Engineers, Department of Defense-Joint Base San Antonio, and Federal Emergency Management Agency.

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 proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The discussion below regarding protecting regulations under section 4(d) complies with our policy.

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species, or he may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address the bracted twistflower's specific threats and conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the bracted twistflower. As discussed above under Summary of Biological Status and Threats, the Service has concluded that the bracted twistflower is likely to

become in danger of extinction within the foreseeable future primarily due to habitat loss due to urban and residential land development, increases in woody plant cover, severe herbivory, and small, isolated populations. The provisions of this proposed 4(d) rule would promote conservation of the bracted twistflower by encouraging management of the landscape in ways that meet both land management considerations and the conservation needs of the bracted twistflower. This proposed 4(d) rule would apply only if and when we make final the listing of the bracted twistflower as a threatened species.

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.

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, authorized, or carried out by a Federal agency—do not require section 7 consultation.

This obligation does not change in any way for a threatened species with a species-specific 4(d) rule. Actions that result in a determination by a Federal agency of ''not likely to adversely affect'' continue to require the Service's written concurrence and actions that are ''likely to adversely affect'' a species require formal consultation and the formulation of a biological opinion.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the bracted twistflower by prohibiting the following activities, except as otherwise authorized or permitted: Importing or exporting; certain acts related to removing, damaging, and destroying; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; and selling or offering for sale in interstate or foreign commerce.

As discussed above under Summary of Biological Status and Threats, habitat loss due to urban and residential land development (Factor A), increases in woody plant cover (Factor A), severe herbivory (Factor E), and small, isolated populations (Factor E) affect the status of the bracted twistflower. To protect the species from these threats, in addition to the protections that apply to Federal lands, the 4(d) rule would prohibit a person from removing, cutting, digging up, or damaging or destroying the species on non-Federal lands in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. As most populations of the bracted twistflower occur off Federal land, these protections in the 4(d) rule are key to its effectiveness. For example, any damage to the species on non-Federal land in violation of a Texas off-highway vehicle law would be prohibited by the 4(d) rule. Additionally, any damage incurred by the species due to criminal trespass on non-Federal lands would similarly violate the proposed 4(d) rule. As a whole, the proposed 4(d) rule would help in the efforts to recover the bracted twistflower by limiting specific actions that damage individual populations.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened plants under certain circumstances. Regulations governing permits for threatened plants are codified at 50 CFR 17.72, which states that ''the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species.'' That regulation also states, ''The permit shall be governed by the provisions of this section unless a special rule applicable to the plant is provided in sections 17.73 to 17.78.'' We interpret that second sentence to mean that permits for threatened species are governed by the provisions of section 17.72 unless a special rule, which we have defined to mean a species-specific 4(d) rule, provides otherwise. We recently promulgated revisions to section 17.71 providing that section 17.71 will no longer apply to plants listed as threatened in the future. We did not intend for those revisions to limit or alter the applicability of the permitting provisions in section 17.72, or to require that every species-specific 4(d) rule spell out any permitting provisions that apply to that species and species-specific 4(d) rule. To the contrary, we anticipate that permitting provisions would generally be similar or identical for most species, so applying the provisions of section 17.72 unless a species-specific 4(d) rule provides otherwise would likely avoid substantial duplication. Moreover, this interpretation brings section 17.72 in line with the comparable provision for wildlife at 50 CFR 17.32, in which the second sentence states, ''Such permit shall be governed by the provisions of this section unless a special rule applicable to the wildlife, appearing in sections 17.40 to 17.48, of this part provides otherwise.'' Under 50 CFR 17.12 with regard to threatened plants, a permit may be issued for the following purposes: For scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or for other purposes consistent with the purposes and policy of the Act. Additional statutory exemptions from the prohibitions are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the bracted twistflower that may result in otherwise prohibited activities without additional authorization.

The Service recognizes the proposed 4(d) rule would allow beneficial and educational aspect of activities with seeds of cultivated plants, which generally enhance the propagation of the species, and therefore would satisfy permit requirements under the Act. The Service intends to monitor the interstate and foreign commerce and import and export of these specimens in a manner that will not inhibit such activities, providing the activities do not represent a threat to the survival of the species in the wild. In this regard, seeds of cultivated specimens would not be subject to the prohibitions above, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container.

Propagation is currently taking place for the bracted twistflower and will continue to be an important recovery tool. This will include collecting seeds from wild populations, following Center for Plant Conservation guidelines and the USFWS–NMFS 2000 Policy Regarding Controlled Propagation of Species Listed Under the Endangered Species Act (65 FR 56916), and propagating them for seed increase, population augmentation, introduction, and research related to the species' recovery.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the bracted twistflower. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

III. 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.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals). Additionally, our regulations at 50 CFR 424.02 define the word ''habitat'' as follows: ''For the purposes of designating critical habitat only, habitat is the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a 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 also 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 Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must 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 that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

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. The implementing regulations at 50 CFR 424.12(b)(2) further delineate unoccupied critical habitat by setting out three specific parameters: (1) When designating critical habitat, the Secretary will first evaluate areas occupied by the species; (2) the Secretary will only consider unoccupied areas to be essential where a critical

habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species; and (3) for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; 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.

As the regulatory definition of ''habitat'' reflects (50 CFR 424.02), habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions found in section 9 of the Act. 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 the 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 those planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed earlier in this document, there is currently no imminent threat of collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA report (Service 2021, entire) and proposed listing determination for the bracted twistflower, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the bracted twistflower and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because the Secretary has not identified other circumstances for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for the bracted twistflower.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the bracted twistflower is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the bracted twistflower.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied

by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the bracted twistflower from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report available on *http://www.regulations.gov* and *https://ecos.fws.gov/ecp/species/2856.* We have determined that the following physical or biological features are essential to the conservation of the bracted twistflower:

Geological Substrate and Soils.

The prevalent Cretaceous geological formations in the Edwards Plateau of central Texas include the Edwards group of formations and its equivalent, the Devils River formation, which replaces the Edwards to the west and south; both of these formations overlie the Glen Rose formation (Maclay and Small 1986, pp. 17–24). Karstic, porous limestones are abundant in the Edwards and Devils River formations, and conversely, the Glen Rose limestones have relatively little porosity. The Edwards Aquifer occupies the porous upper strata, and many seeps and springs occur along the Balcones Escarpment, where the boundary of these upper formations with the Glen Rose is exposed at the surface. Some units of the Edwards, Devils River, and Glen Rose formations are dolomitic, meaning that, in addition to calcium, they also contain significant amounts of magnesium. Bracted twistflower populations occur in close proximity to the exposed boundary of the Edwards or Devils River and Glen Rose formations (McNeal 1989, p. 15; Zippin 1997, p. 223; Carr 2001, p. 1; Pepper 2010, p. 5). Most populations are less than 2 kilometers (km) (1.2 miles (mi)) from this boundary, as seen in less detailed, small-scale geological maps (Fowler 2014, pp. 11–12). A detailed, large-scale geological map of northern Bexar County (Clark *et al.* 2009) reveals that two bracted twistflower populations (Eisenhower City Park and Rancho Diana) occur in a narrow stratum identified as a basal nodular hydrostratigraphic member of the Kainer Formation, Edwards Group. This stratum is immediately below a dolomitic hydrostratigraphic member of the Kainer Formation, and immediately above a cavernous hydrostratigraphic member of the Glen Rose limestone (Service 2021, pp. 8–9, figures 6–8). Populations often occur in horizontal bands where these strata are exposed along slopes. Soils in the immediate vicinity of individual plants are very shallow clays with abundant rock fragments.

Although we do not know why the species is associated with the Edwards-Glen Rose boundary, Fowler (2014, p. 12) proposed two hypotheses: (1) The species depends on increased seepage between these formations; and (2) the species requires higher levels of magnesium ions that leach from dolomitic limestone in the lower strata of the Edwards formation. These hypotheses are not mutually exclusive.

Ecological Community.

Bracted twistflower occurs in native, old-growth juniper-oak woodlands and shrublands along the Balcones Escarpment. Individual plants frequently occur near or under a canopy of Ashe juniper, Texas live oak, Texas persimmon (*Diospyros texana*), Texas mountain laurel, Texas red oak or other trees. In many sites bracted twistflower inhabits dense thickets of evergreen sumac (*Rhus virens*), agarita (*Mahonia trifoliolata*), Roemer acacia (*Acacia roemeriana*), Lindheimer silk-tassel (*Garrya ovata* ssp. *lindheimeri*), thoroughwort (*Ageratina havanensis*), oreja de ratón (*Bernardia myricifolia*), or other shrubs.

Bracted twistflower is a winter annual plant that persists only where individuals produce enough seeds to sustain a reserve of viable seeds in the soil. White-tailed deer and introduced ungulates heavily browse the flower stalks of individual plants before they can set seed, thus contributing to the decline of populations. Herbivory threatens the species throughout its range, except where it is protected from deer by fencing or intensive herd management (hunting) (McNeal 1989, p. 17; Damude and Poole 1990, pp. 52–53; Dieringer 1991, p. 341; Zippin 1997, pp. 39–197, 227; Leonard 2010, pp. 36–43; Fowler 2014, pp. 17, 19). The extremely high deer densities in the Edwards Plateau of Texas exacerbate the species' vulnerability to herbivory (Zippin 1997, p. 227).

In sites that are protected from white-tailed deer, the most robust bracted twistflower plants occur where woody plant cover is less dense (Damude and Poole 1990, pp. 29–30; Poole *et al.* 2007, p. 470). The two largest populations, Laurel Canyon and Rancho Diana, occur in relatively open vegetation of low shrubs and sotol (*Dasylirion texanum*), where there is little or no juniper cover. Laboratory and field experiments demonstrated that growth and reproduction of bracted twistflower benefits from higher light intensity and duration than it receives in many of the extant populations (Fowler 2010, pp. 10–11; Leonard 2010, p. 63; Ramsey 2010, p. 20); its persistence in dense thickets may be due to increased herbivory of the plants growing in more open vegetation (Leonard 2010, p. 63; Ramsey 2010, p. 22). Deer-exclusion cages significantly increased the

probability of survival, reproduction, above-ground biomass, and seed set, compared to un-caged plants, at a bracted twistflower population near Mesa Drive in Austin where the deer population was very high (Zippin 1997, p. 60). In 2012, the City of San Antonio Parks and Recreation Department (SAPRD) protected the Rancho Diana population with a deer-fenced exclosure. In August and September 2017, SAPRD personnel cut to ground level all woody vegetation in a 760-m2 (8,180-ft2) plot within the exclosure. In May 2018, the number of bracted twistflower plants within the cleared plot was 16 times greater, and seed production within the plot was 15 times greater, than in any of 4 previous years (Cozort 2019). In synthesis, shaded juniper thickets may serve as refugia from herbivory, but are not the species' optimal habitat. Bracted twistflower is best adapted to microsites at canopy gaps and edges within the juniper-oak woodland where it receives direct sunlight at least part of the day. It is likely that wildfires occurred more frequently in bracted twistflower habitats prior to European settlement, and that the more recent reduction in fire frequency has allowed Ashe juniper to increase in cover and density (Bray 1904, pp. 14–15, 23–24; Fonteyn *et al.* 1988, p. 79; Service 2021, pp. 12, 29–30).

Bracted twistflower produces seeds primarily through outcrossing (fertilization between different individuals), and therefore depends heavily on pollinators, including a native leafcutter bee, *Megachile comata,* for reproduction (Dieringer 1991, pp. 341–343). Halictid bees (sweat bees) and other native bee species may also be effective pollinators (Service 2021, p. 5). Therefore, bracted twistflower habitats must also support populations of leafcutter bees and other native bee species that effectively pollinate the species. Native bees in turn require, as sources of pollen and nectar, a diverse, abundant understory of native forb and shrub species that in the past was periodically renewed by wildfires.

In summary, the essential physical and biological features of bracted twistflower are:

(1) Karstic, dolomitic limestones underlain by less permeable limestone strata, where perched aquifers seep to the surface along slopes. These are often found within 2 kilometers of the exposed boundary of the Edwards or Devils River and Glen Rose geological formations;

(2) Native, old-growth juniper-oak woodlands and shrublands along the Balcones Escarpment;

(3) Herbivory from white-tailed deer and introduced ungulates of such low intensity that it does not severely deplete populations prior to seed dispersal;

(4) Tree and shrub canopy gaps that allow direct sunlight to reach the herbaceous plant layer at least 6 hours per day; and

(5) Viable populations of native bee species and the abundant, diverse forb and shrub understory that support them.

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 which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protections to reduce the following threats: Habitat loss due to urban and residential development, increased woody plant cover, severe herbivory by native and introduced ungulates, and trampling and erosion from recreational use. Management activities that could ameliorate these threats include (but are not limited to) juniper thinning, prescribed fire, fencing to exclude deer and other herbivores, herd management of local ungulate populations, and protection from foot and bicycle traffic. These management activities will protect the physical and biological features essential for the conservation of the species by reducing herbivory, maintaining open canopies, protecting the habitat from trampling and erosion, and conserving diverse shrub and forb understory vegetation that supports the species' native bee pollinators.

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 specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

Areas Occupied at the Time of Listing

We considered the geographic areas occupied by the species at the time of listing to consist of EOs with survey data within the past 7 years or areas in which we confirmed that habitat remained intact using aerial imagery. We know that seeds can remain dormant and viable in the soil of intact sites for at least 7 years. Due to the large proportion of private lands within the range of the species, the majority of known locations occur on publicly-owned conservation lands that can be accessed for surveys. Most of the critical habitat units have been surveyed annually, and the habitats are protected by the cities of Austin and San Antonio. We do not have recent surveys for two sites, EOs 10 and 18 (Garner State Park and Medina Lake). However, we have precise geographic coordinates for these populations collected with Global Positioning System (GPS) instruments. In a Geographic Information System (GIS), we have overlaid the geographic coordinates of these sites on recent orthographically corrected aerial photographs and have determined that the habitats remain intact.

We designated critical habitat units only at extant EOs that still possess one or more of the physical and biological features that are essential to its conservation. We delineated each critical habitat unit around areas where karstic, dolomitic limestones of the Edwards or Devils River formations overlay the less permeable Glen Rose formation. The elevation ranges and degree of slope of these geological strata vary among EOs. However, because the exposed strata that support bracted twistflower populations are nearly horizontal, we used the elevation range where individuals have been observed at each EO to delineate this essential geological feature over the short distances spanned by that EO Similarly, since seepage from overlying karst aquifers occurs on slopes, we also used the range of slopes where individuals have been observed at each EO to delineate this essential feature at that EO. Thus, we combined the parameters of the observed elevation range and slope range of the species at each EO to delimit each critical habitat unit. However, we excluded any areas that lack natural vegetation, such as roads and buildings, as determined through examination of recent aerial photographs. We also did not designate critical habitat units at EOs that are no longer occupied, or that no longer possess the essential physical and biological features due to development or significant disturbance. Finally, we did not extend critical habitat units beyond areas that have been surveyed, because we cannot determine if they

contain the essential physical or biological features.

Areas Outside the Geographic Area Occupied at the Time of Listing

We are not proposing to designate any areas outside the geographic area currently occupied by bracted twistflower because we did not find any unoccupied areas that contained the necessary PBFs and were essential for the conservation of the species. We are designating critical habitat within occupied habitat in all three representation areas, including areas that preserve the populations with the highest resiliency. Therefore, unoccupied areas are not necessary for the recovery of the species.

General Information on the Maps of the Proposed Critical Habitat Designation

When determining proposed 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 bracted twistflower. 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 proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, 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.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species.

Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support the bracted twistflower's particular use of that habitat.

The proposed critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2021–0013 and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**).

Proposed Critical Habitat Designation

We are proposing approximately 1,607 acres (ac) (650 hectares (ha)) in three units as critical habitat for the bracted twistflower. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the bracted twistflower. The three areas we propose as critical habitat are: (1) Northeast Unit; (2) Central Unit; and (3) Southwest Unit. Table 2 shows the proposed critical habitat units, the land ownership, and the approximate area of each unit. All units proposed for designation are occupied.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE BRACTED TWISTFLOWER

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

Unit	Subunit (conservation area or property name)	Property owner	Occupied?	Critical habitat size	
				Ac	Ha
1. Northeast	1a. Barton Creek Park/ Wilderness Area (EOs 17, 36).	City of Austin	Yes	690.50	279.44
	1b. Bull Creek Park (EO 35).	City of Austin	Yes	2.32	0.94
	1c. Mount Bonnell Park (EO 9).	City of Austin	Yes	2.00	0.81
	1d. Ullrich Water Treatment Plant (Bee Creek Park) (EO 7).	City of Austin	Yes	29.92	12.11
2. Central	2a. Eisenhower Park (EO 23).	City of San Antonio	Yes	78.16	31.63
	2b. Rancho Diana (EO 31).	City of San Antonio	Yes	395.73	160.15
	2c. Laurel Canyon Ranch Conservation Easement (EO 25).	Laurel C. Canyon Ranch LP; City of San Antonio holds conservation easement.	Yes	39.59	16.02
	2d. Medina River (EO 18)	Private	Yes	23.28	9.42
3. Southwest	Garner State Park (EO 10).	Texas Parks and Wildlife Department.	Yes	345.22	139.71
Totals				1,606.72	650.23

Note: Area sizes may not sum exactly due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the bracted twistflower, below.

Unit 1: Northeast

Unit 1 consists of 725 ac (293 ha) of occupied habitat within Travis County, Texas, and is composed of four subunits, which are described below.

Subunit 1a

Barton Creek Greenbelt and Barton Creek Wilderness Park consist of 838.76 ac (339.44 ha) and 1,120.26 ac (453.36 ha) of protected areas, respectively, along Barton Creek within the City of

Austin. These contiguous conservation areas are owned and managed by the City of Austin Parks and Recreation Department as units of the BCP system. We are proposing to designate 690.50 ac (279.44 ha) of the Barton Creek BCP units as occupied critical habitat for the bracted twistflower (EOs 17 and 36). This subunit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, and viable native bee populations; the subunit has small canopy gaps, and small areas are protected from deer. Specific threats include juniper encroachment into canopy gaps, white-tailed deer herbivory, infrequent wildfire, and off-trail recreational uses. Special management needed for bracted twistflower within this subunit includes white-tailed deer herd management and thinning of juniper trees; if it can be conducted safely, management could include prescribed burning. The primary management goal of these BCP units is to conserve the golden-cheeked warbler (*Dendroica chrysoparia*), bracted twistflower, and protected cave invertebrates, while providing appropriate, safe, public recreational access; over 100,000 people visit the Barton Creek units annually for outdoor recreational uses (City of Austin 2007a, pp. 1–11). The specific management objectives relevant to the bracted twistflower include posting educational signs, developing memoranda of cooperation with user groups, conducting outreach to user groups, blocking unauthorized trails, enforcing trail closures, thinning junipers, and controlling exotic species. The City of Austin Wildland Conservation Division monitors the Barton Creek bracted twistflower populations annually (City of Austin 2018); we estimate that this is the second largest known population of this species.

Subunit 1b

Bull Creek District Park, acquired in 1971, is a 47.30-ac (19.14-ha) conservation area owned and managed by the City of Austin Parks and Recreation Department as a unit of the BCP system. We are proposing to designate 2.32 ac (0.94 ha) of this BCP unit as occupied critical habitat for the bracted twistflower (EO 35). This subunit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, and viable native bee populations. Specific threats include juniper encroachment into canopy gaps, white-tailed deer herbivory, infrequent wildfire, off-trail recreational uses, and small population size. Special management needed for the bracted twistflower within this subunit includes white-tailed deer herd management and thinning of juniper trees; if it can be conducted safely, management could include prescribed burning. The primary management goals of this BCP unit are to maintain and improve habitat for golden-cheeked warblers; to protect karst species and other species of concern, including canyon mock-orange (*Philadelphus ernestii*), a rare endemic shrub; and to protect the watershed, water quantity, and water quality (City of Austin 2007b, pp. 1–5). A secondary management goal is to provide safe public access for outdoor recreation. Although the bracted twistflower is not specifically included in the BCP management plan for Bull Creek District Park, a small population was discovered there after the plan was developed and is now monitored annually by the City of Austin Wildland Conservation Division (City of Austin 2018).

Subunit 1c

Mount Bonnell Park (Covert Park at Mount Bonnell) is a 6.07-ac (2.45-ha) conservation area owned and managed by the City of Austin Parks and Recreation Department as a unit of the BCP system. We are proposing to designate 2.00 ac (0.81 ha) of this BCP unit as occupied critical habitat for the bracted twistflower (EO 9). This subunit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, and viable native bee populations. Specific threats include juniper encroachment into canopy gaps, white-tailed deer herbivory, infrequent wildfire, off-trail recreational uses, and small population size. Special management needed for the bracted twistflower within this subunit includes white-tailed deer herd management and thinning of juniper trees; if it can be conducted safely, management could include prescribed burning. The primary management goal for the BCP acreage of Mt. Bonnell is to protect and manage habitat for the bracted twistflower (City of Austin 2007c, pp. 1–4). Management objectives include stopping unauthorized foot traffic into the species' habitat; conducting annual monitoring of the population; increasing the population size; working with adjacent private landowners to protect and manage the species; and removing nonnative, invasive vegetation. The City of Austin Wildland Conservation Division monitors the Mount Bonnell bracted twistflower population annually (City of Austin 2018). This small population is a remnant of a much larger population that extended onto adjacent private land and was subsequently lost to residential development.

Subunit 1d

Ullrich Water Treatment Plant (Bee Creek Park) is a 95.42-ac (38.61-ha) property owned and managed by the City of Austin Water Utility. The Balcones Canyonlands Conservation Plan designated 17.7 ac (7.16 ha) of this property as BCP Habitat Management Areas. We are proposing to designate 29.92 ac (12.11 ha) of this BCP unit as occupied critical habitat for the bracted twistflower (EO 7); the proposed critical habitat area includes some undeveloped portions of the property that were not included in the BCP Habitat Management Area designation. This subunit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, protection from deer herbivory, and viable native bee populations. Specific threats include juniper encroachment into canopy gaps, infrequent wildfire, and small population size. Special management needed for the bracted twistflower within this subunit includes white-tailed deer herd management and thinning of juniper trees; if it can be conducted safely, management could include prescribed burning. The primary management goals are to protect and maintain habitat for the golden-cheeked warbler, protect karst features and monitor the Bee Creek Cave harvestman (*Texella reddelli*) and other karst invertebrates, protect the population of bracted twistflower at this site, and protect the Little Bee Creek watershed quality (City of Austin 2007d, pp. 1–4). Austin Water Utility constructed a game fence to protect the bracted twistflower population from deer browsing and unauthorized public access. The City of Austin Wildland Conservation Division monitors the Ullrich bracted twistflower population annually (City of Austin 2018).

Unit 2: Central

Unit 2 consists of 537 ac (217 ha) of occupied habitat within Bexar and Medina Counties in Texas. This unit is composed of four subunits, which are described below.

Subunit 2a

Eisenhower Park is a 324-ac (131-ha) designated natural area in Bexar County owned by the City of San Antonio and managed by San Antonio Parks and Recreation Department (SAPRD). It is bounded on the north by Camp Bullis Military Reservation. We are proposing

to designate 78.16 ac (31.63 ha) as occupied critical habitat for the bracted twistflower at Eisenhower Park (EO 23). This subunit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, protection from deer herbivory, tree and shrub canopy gaps, and viable native bee populations. Specific threats include herbivory from white-tailed deer, juniper encroachment into canopy gaps, infrequent wildfire, off-trail recreational uses, and small population size. Special management needed for the bracted twistflower within this subunit includes white-tailed deer herd management and thinning of juniper trees; if it can be conducted safely, management could include prescribed burning. One population of bracted twistflower occurred on both sides of the Eisenhower Park-Camp Bullis boundary; however, no individuals have been observed on the Camp Bullis side for about 10 years. SAPRD monitors the population at Eisenhower Park annually; additionally, SAPRD has installed deer-fenced exclosures to prevent herbivory and has selectively thinned the woody overstory to increase sunlight exposure (Austin 2018, p. 10; Cozort 2019, p. 2). SAPRD currently proposes to augment the population size and genetic diversity through propagation and reintroduction (Cozort 2019).

Subunit 2b

Rancho Diana is a 1,148-ac (465-ha) natural area in Bexar County acquired by the City of San Antonio through the City's 2005 Edwards Aquifer Protection program. We are proposing to designate 395.73 ac (160.15 ha) as occupied critical habitat for the bracted twistflower at Rancho Diana (EO 31). This subunit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, protection from deer herbivory, tree and shrub canopy gaps, and viable native bee populations. Specific threats include herbivory from white-tailed deer, juniper encroachment into canopy gaps, and infrequent wildfire. Special management needed for the bracted twistflower within this subunit includes white-tailed deer herd management and thinning of juniper trees; if it can be conducted safely, management could include prescribed burning. This property is managed by SAPRD, but currently is not open to the public. SAPRD discovered a large population of bracted twistflower at Rancho Diana in 2010, and subsequently protected the population with a deer-fenced exclosure; however, portions of the population extend beyond this exclosure and are vulnerable to herbivory. SAPRD cleared the overstory brush from small portions of the enclosed population in 2017 and 2019, resulting in a large increase in the emergence and seed production of bracted twistflowers within the cleared areas.

Subunit 2c

Laurel Canyon Ranch Conservation Easement is a private property in Medina County owned by Laurel C. Canyon Ranch Limited Partnership, of Houston, Texas. The City of San Antonio Edwards Aquifer Protection Program holds a conservation easement on 549 ac (222 ha) of Laurel Canyon Ranch (City of San Antonio and The Nature Conservancy 2016). About 87 percent of the easement is within the Edwards Aquifer Recharge Zone, and the conservation easement protects water quantity and quality for the City of San Antonio. This subunit is not open to the public. The largest known population of the bracted twistflower was documented at this site in 2001 (Carr 2001; TXNDD 2018), and has been monitored annually by SAPRD since 2018. We are proposing to designate 39.59 ac (16.02 ha) as occupied critical habitat for the bracted twistflower at the Laurel Canyon Ranch Conservation Easement (EO 25). This subunit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, tree and shrub canopy gaps, and viable native bee populations. Specific threats include herbivory from white-tailed deer, juniper encroachment into canopy gaps, and infrequent wildfire. Special management needed for the bracted twistflower within this subunit includes white-tailed deer herd management and thinning of juniper trees; if it can be conducted safely, management could include prescribed burning.

Subunit 2d

Medina River is a 722.81-ac (292.52-ha) tract of private property in Medina County owned by Medina Ranch Inc. of San Antonio, Texas. A population of about 1,000 bracted twistflowers was documented there in April 2007 (TXNDD 2018). We are proposing to designate 23.28 ac (9.42 ha), located along bluffs overlooking the Medina River Diversion Lake, as occupied critical habitat for the bracted twistflower (EO 18). This subunit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, tree and shrub canopy gaps, and viable native bee populations. Specific threats include herbivory from white-tailed deer, juniper encroachment into canopy gaps, and infrequent wildfire. Special management needed for the bracted twistflower within this subunit includes white-tailed deer herd management and thinning of juniper trees; if it can be conducted safely, management could include prescribed burning. This subunit is not open to the public.

Unit 3: Southwest

Unit 3 consists of occupied habitat within Uvalde County, Texas. Garner State Park was donated by local landowners to the State of Texas in 1941, and is managed by TPWD. One population of bracted twistflower persists at this very heavily visited, 1,786-ac (723-ha) State park. We are proposing to designate 345.23 ac (139.71 ha) as occupied critical habitat for the bracted twistflower at Garner State Park (EO 10). This subunit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, tree and shrub canopy gaps, and viable native bee populations. Specific threats include herbivory from white-tailed deer and introduced ungulates, juniper encroachment into canopy gaps, off-trail recreational uses of habitats, and infrequent wildfire. Special management needed for the bracted twistflower within this subunit includes white-tailed deer herd management and thinning of juniper trees; if it can be conducted safely, management could include prescribed burning.

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.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse

modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed 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, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented 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 Service 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 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, if subsequent to the previous consultation: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed 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 violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to, actions that would disturb the soil or underlying rock strata, reduce the diversity and abundance of native bees and bee-pollinated plant species, or diminish the perched aquifers that supply seep moisture to bracted twistflower habitats. Such activities could include, but are not limited to, excavation of soil or underlying rock strata with bulldozers, graders, back-hoes, or excavators within habitats; application of insecticides that kill or impair native bees; application of herbicides that kill or damage native bee-pollinated plants; and displacement of native juniper-oak woodlands with surface cover, such as pavement and buildings, that impede infiltration of rainwater into the soil. These activities could deplete or destroy the soil seed reserve of viable seeds of the bracted twistflower, diminish the abundance of the species' pollinators and thereby reduce seed production and gene flow, or alter the soil and hydrology so that it no longer supports the germination, establishment, and reproduction of the bracted twistflower.

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 geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (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 the proposed 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 if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, 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 the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad

discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the bracted twistflower (IEc. 2020, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. If the proposed critical habitat designation contains any unoccupied units, the screening analysis assesses whether those units are unoccupied because they require additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the bracted twistflower; our DEA is summarized in the narrative below.

Executive Orders (EOs) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the EO regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the bracted twistflower, first we identified, in the IEM dated October 8, 2020, probable incremental economic impacts associated with potential activities based upon our knowledge of future projects and past consultations. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, a designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the bracted twistflower is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If, when we list the species, we also finalize this proposed critical habitat designation, our consultation would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the bracted twistflower's critical habitat. Because the designation of critical habitat for the bracted twistflower was proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the

same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the bracted twistflower would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the bracted twistflower consists of approximately 1,607 ac (650 ha) of occupied habitat within three units. Unit 1 (Northeast) contains four subunits totaling 724.74 ac (293.30 ha), all owned by the City of Austin. Unit 2 (Central) contains four subunits totaling 536.79 ac (217.22 ha); two subunits are owned by the City of San Antonio, and two are privately owned. Unit 3 (Southwest) contains 345.23 ac (139.71 ha) that are within Garner State Park and managed by Texas Parks and Wildlife Department.

All proposed critical habitat units are occupied by the species; therefore, any activities with a Federal nexus in the proposed critical habitat area that may affect the species would be subject to section 7 consultation regardless of whether critical habitat is designated. It is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the bracted twistflower. As a result, critical habitat is not expected to result in additional consultations beyond those required due to the presence of the species. Therefore, only administrative costs are expected within the proposed critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that these costs would predominantly be administrative in nature and would not be significant. The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies, State agencies or municipalities, and, in some cases, third parties.

Overall, future consultation activity within the proposed critical habitat area is likely to be very limited, but may include the following categories: (1) Land restoration of enhancement; (2) agriculture; (3) development; (4) transmission line construction; (5) oil or gas pipelines; (6) transportation; and (7) stream modification. The majority (99 percent) of the proposed critical habitat area is within protected areas and conservation lands. The consultation history indicates that few projects and activities have occurred within critical habitat and within the broader range of the species over the past 9 years. Future consultations within the proposed critical habitat units are anticipated to range from zero to 0.1 formal consultations per year, 0.1 to 0.4 informal consultations per year, and zero to 0.9 technical assistance efforts per year. Based on the average annual rate of consultations, the incremental administrative costs of consultation for the proposed critical habitat units may range from $280 to $2,100 in an average year (IEc 2020, p. 15).

We are soliciting data and comments from the public on the DEA discussed above, as well as on all aspects of this proposed rule and our required determinations.

During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90. If we receive credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion, we will conduct an exclusion analysis for the relevant area or areas. We may also exercise the discretion to evaluate any other particular areas for possible exclusion. Furthermore, when we conduct an exclusion analysis based on impacts identified by experts in, or sources with firsthand knowledge about, impacts that are outside the scope of the Service's expertise, we will give weight to those impacts consistent with the expert or firsthand information unless we have rebutting information. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i), because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides credible information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or

waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

Under section 4(b)(2) of the Act, we also consider whether where a national-security or homeland-security impact might exist on lands not owned or managed by DoD or DHS. In preparing this proposal, we have determined that, other than the land exempted under section 4(a)(3)(B)(i) of the Act based upon the existence of an approved INRMP (see Exemptions, above), the lands within the proposed designation of critical habitat for the bracted twistflower are not owned or managed by DoD or DHS. Therefore, we anticipate no impact on national security. However, if through the public comment period we receive credible information regarding impacts on national security or homeland security from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90.

Consideration of 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 discussed above. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs), or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of Tribal conservation plans and partnerships 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. No Tribal lands are included in the critical habitat designation for the bracted twistflower.

We are not considering any exclusions at this time from the proposed designation under section 4(b)(2) of the Act based on partnerships, management, or protection afforded by cooperative management efforts. When analyzing the benefits of including or excluding particular areas covered by conservation plans, agreements, or partnerships permitted under section 10 of the Act, we consider whether the species for which critical habitat is being designated is a covered species in the conservation plan or agreement and whether the conservation plan or agreement specifically addressed the habitat of the species (50 CFR 17.90(3)). Within the proposed critical habitat units, there is currently one HCP being implemented, the Balcones Canyonlands Preserve HCP; however, this HCP does not include the bracted twistflower. Rather, the HCP explicitly states that the bracted twistflower will not be adequately protected by the plan (BCP 1996, pp. 7, 9). Here, the bracted twistflower does have similar habitat requirements to those species covered by the Balcones Canyonlands Preserve HCP, but the HCP specifically states that several of those habitats will be destroyed by the actions taken in the HCP's planning area. Accordingly, the HCP does not adequately address the habitat of the bracted twistflower or meet its conservation needs in its planning area, and, therefore, the HCP's covered area should not be considered for exclusion here.

We also analyze the benefits of including or excluding particular areas covered by conservation plans, agreements, or partnerships that have not been authorized by a permit under section 10 of the Act (50 CFR 17.90(4)). A non-binding, non-obligatory memorandum of agreement (MOA) to work cooperatively at efforts to conserve the bracted twistflower between the Service, Texas Parks and Wildlife Department, City of Austin, Travis County, Lower Colorado River Authority, and the Ladybird Johnson Wildflower Center was entered into in 2004. When analyzing the benefits of including or excluding these areas, we analyze the degree to which the plan or agreement provides for the conservation of the physical or biological features that are essential to the conservation of the species (50 CFR 17.90(4)(vi)). The MOA has benefited conservation of the bracted twistflower, but does not address all of the species' essential physical and biological features; specifically, it does not address encroachment and competition from Ashe juniper. Scientific studies that revealed the species' requirement for exposure to direct sunlight were not published until after the MOA was finalized in 2004 (Fowler 2010, pp. 1–18; Leonard 2010, pp. 1–86; Ramsey 2010, pp. 1–35; Leonard and Van Auken 2013, pp. 276–285). Consequently, the critical habitat designation would enhance ongoing conservation efforts, and the potential benefit of exclusion does not outweigh the benefit of inclusion.

We have not identified any areas to consider for exclusion from critical habitat based on other relevant impacts. However, during the development of a final designation, we will consider all information currently available or received during the public comment period. If we receive credible information regarding the existence of a meaningful impact supporting a benefit of excluding any areas, we will undertake an exclusion analysis and determine whether those areas should be excluded from the final critical habitat designation under the authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90. We may also exercise the discretion to undertake exclusion analyses for other areas as well, and we will describe all of our exclusion analyses as part of a final critical habitat determination.

Summary of Exclusions Considered Under 4(b)(2) of the Act

At this time we are not considering any exclusions from the proposed designation based on economic impacts, national security impacts, or other relevant impacts—such as partnerships, management, or protection afforded by cooperative management efforts—under section 4(b)(2) of the Act. Some areas within the proposed designation are included in Balcones Canyonlands Preserve HCP and within a memorandum of agreement (MOA) between the Service, Texas Parks and Wildlife Department, City of Austin, Travis County, Lower Colorado River Authority, and the Ladybird Johnson Wildflower Center. In this proposed rule, we are seeking credible information from the public regarding the existence of a meaningful impact supporting a benefit of excluding any areas that would be used in an exclusion analysis that may result in the exclusion of areas from the final critical habitat designation. (Please see **ADDRESSES** for instructions on how to submit comments).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of EO 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. EO 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 proposed 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 whether 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.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies 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 would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial 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. In our economic analysis, we did not find that this proposed critical habitat designation would 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 finding:

(1) This proposed rule would 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 would significantly or uniquely affect small governments because the lands being proposed for critical habitat designations are primarily owned by the cities of Austin and San Antonio or the State of Texas and none of these government entities fits the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with EO 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the bracted twistflower in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for the bracted twistflower, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with EO 13132 (Federalism), this proposed 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 proposed critical habitat designation with, appropriate State resource agencies. 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 proposed 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 proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for 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 State and local governments in long-range planning because they 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) of the Act 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 would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed 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 information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses

pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of 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 have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the bracted twistflower, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend 50 CFR part 17 as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12(h) by adding an entry for ''*Streptanthus bracteatus*'' 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) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	*
Streptanthus bracteatus	bracted twistflower	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.73(i); [4d] 50 CFR 17.96(a).[CH]
*	*	*	*	*

■ 3. Amend § 17.73, as proposed to be amended at 85 FR 58224 (September 17, 2020), 85 FR 61684 (September 30, 2020), 85 FR 66906 (October 21, 2020), 86 FR 3976 (January 15, 2021), 86 FR 33159 (June 24, 2021), and 86 FR 37091 (July 14, 2021), by adding paragraphs (h) and (i) to read as follows:

§ 17.73 Special rules—flowering plants.

* * * * *

(h) [Reserved]

(i) *Streptanthus bracteatus* (bracted twistflower). (1) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to the bracted twistflower. Except as provided under paragraph (i)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.61(b) for endangered plants.

(ii) Remove and reduce to possession from areas under Federal jurisdiction; maliciously damage or destroy the species on any such area; or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.

(iii) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.61(d) for endangered plants.

(iv) Sale or offer for sale, as set forth at § 17.61(e) for endangered plants.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.72.

(ii) Any employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction members of bracted twistflower that are covered by an approved cooperative agreement to carry out conservation programs.

(iii) Engage in any act prohibited under paragraph (i)(1) of this section with seeds of cultivated specimens, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container.

* * * * *

■ 4. Amend § 17.96(a) by adding an entry for ''Family Brassicaceae: *Streptanthus bracteatus* (bracted twistflower)'' in alphabetical order to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Brassicaceae: *Streptanthus bracteatus* (bracted twistflower)

(1) Critical habitat units are depicted for Bexar, Medina, Travis, and Uvalde Counties, Texas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the bracted twistflower consist of the following components:

(i) Karstic, dolomitic limestones underlain by less permeable limestone strata, where perched aquifers seep to the surface along slopes. These are often found within 2 kilometers of the exposed boundary of the Edwards or Devils River and Glen Rose geological formations;

(ii) Native, old-growth juniper-oak woodlands and shrublands along the Balcones Escarpment;

(iii) Herbivory from white-tailed deer and introduced ungulates of such low intensity that it does not severely deplete populations prior to seed dispersal;

(iv) Tree and shrub canopy gaps that allow direct sunlight to reach the herbaceous plant layer at least 6 hours per day; and

(v) Viable populations of native bee species and the abundant, diverse forb and shrub understory that support them.

(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 the effective date of this rule.

(4) Data layers defining map units were created using U.S. Geological Survey digital elevation models. For each unit/subunit, we determined the range of occupied elevations and the range of occupied slopes; critical habitat polygons consisted of the intersection of the occupied elevations and occupied slopes. 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 *http://www.regulations.gov* at Docket No. FWS–R2–ES–2021–0013, 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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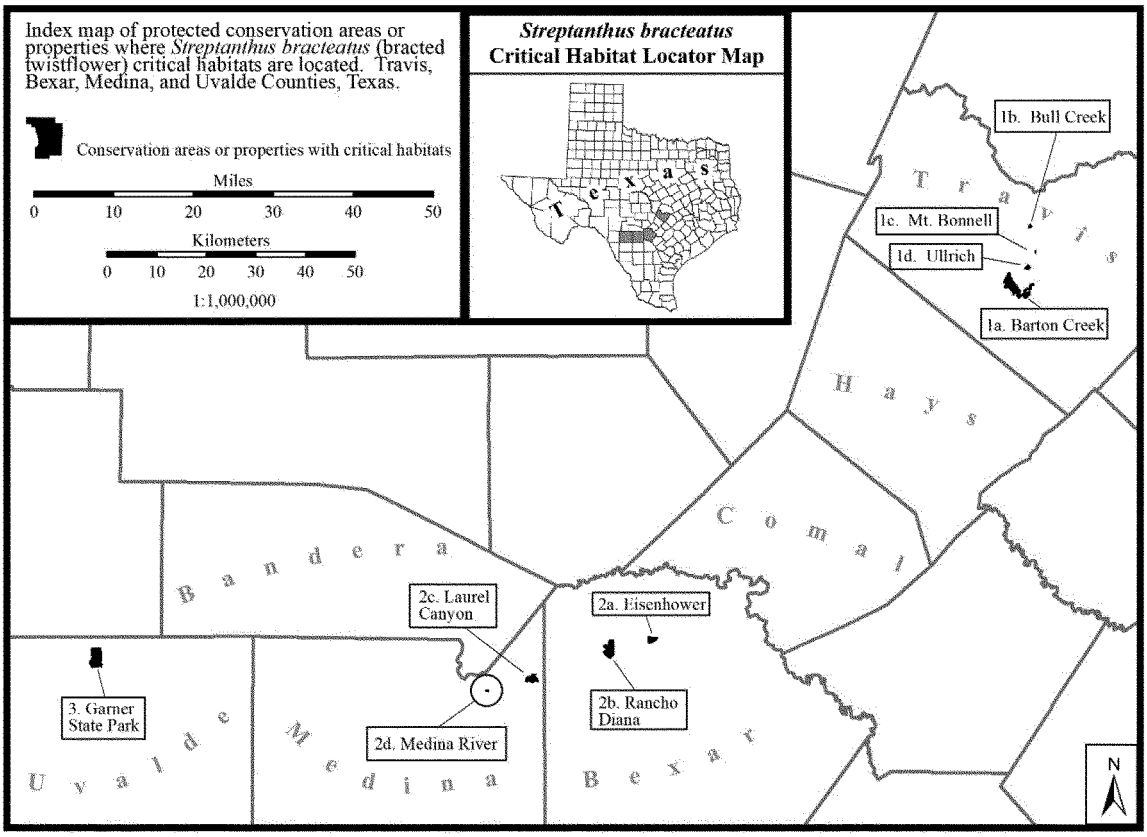
Figure 1 to *Streptanthus bracteatus* (bracted twistflower) paragraph (5)



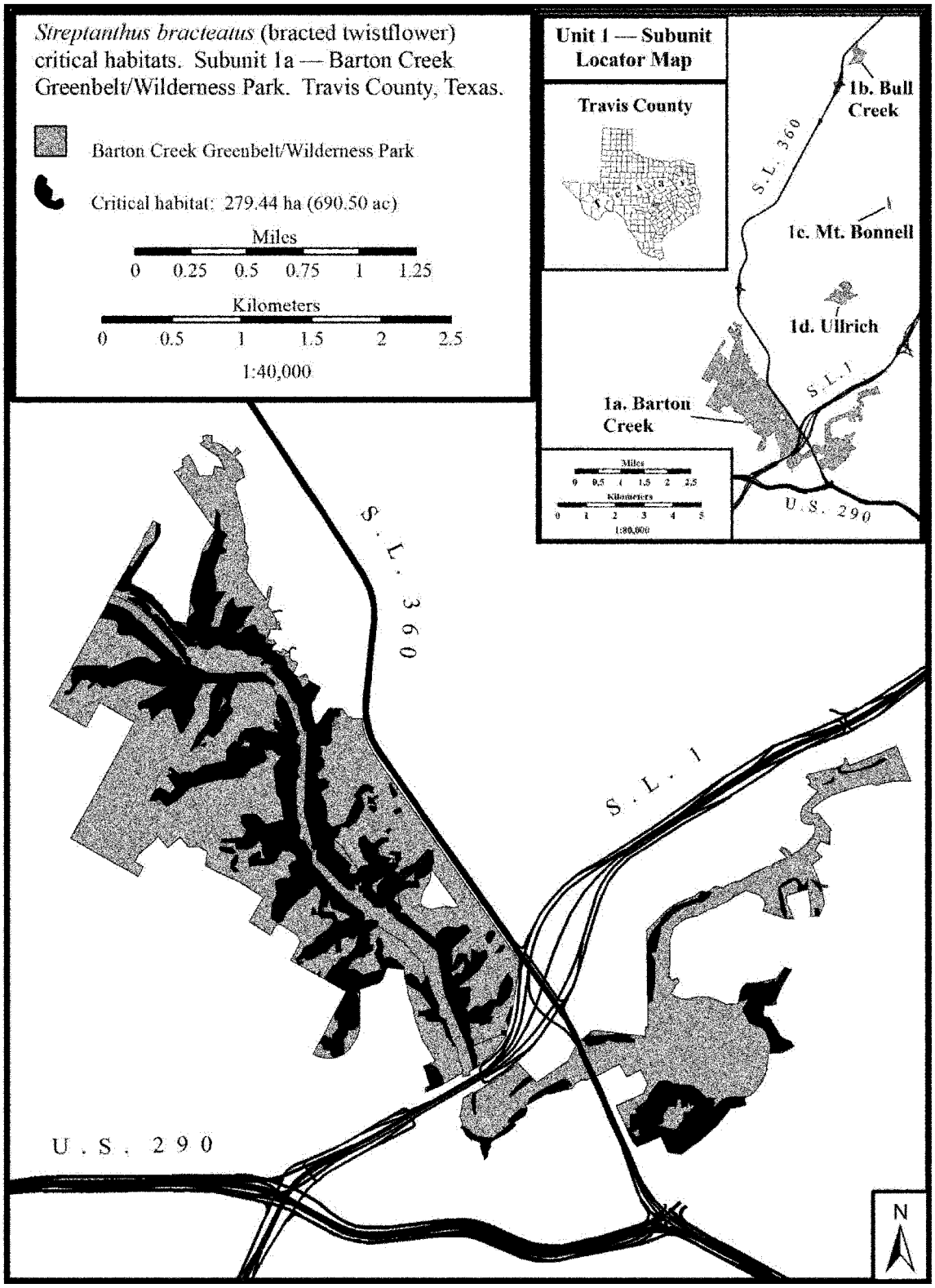
(6) Unit 1: Northeast, Travis County, Texas.

(i) Subunit 1a: Barton Creek Park/Wilderness Area.

(A) Subunit 1a consists of 690.5 acres (ac) (279.44 hectares (ha)) in Travis County and is composed of lands along Barton Creek owned by the City of Austin Parks and Recreation Department and managed as a unit of the Balcones Canyonlands Preserve (BCP) system.

(B) Map of Subunit 1a follows:

Figure 2 to *Streptanthus bracteatus* (bracted twistflower) paragraph (6)(i)(B)



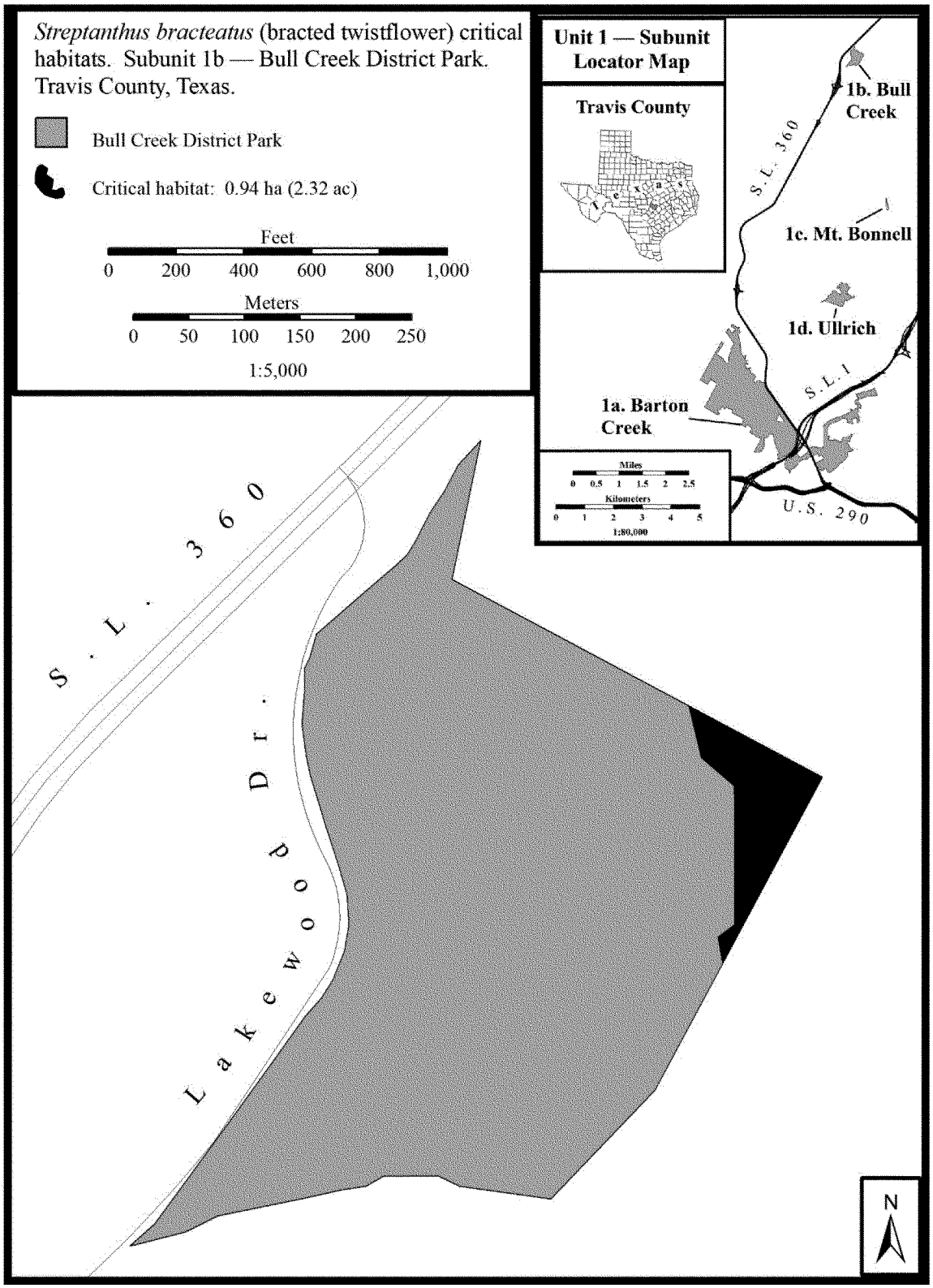
(ii) Subunit 1b: Bull Creek Park.

(A) Subunit 1b consists of 2.32 ac (0.94 ha) in Travis County and is composed of lands owned by the City of Austin Parks and Recreation

Department and managed as a unit of the BCP system.

(B) Map of Subunit 1b follows:

Figure 3 to *Streptanthus bracteatus* (bracted twistflower) paragraph (6)(ii)(B)

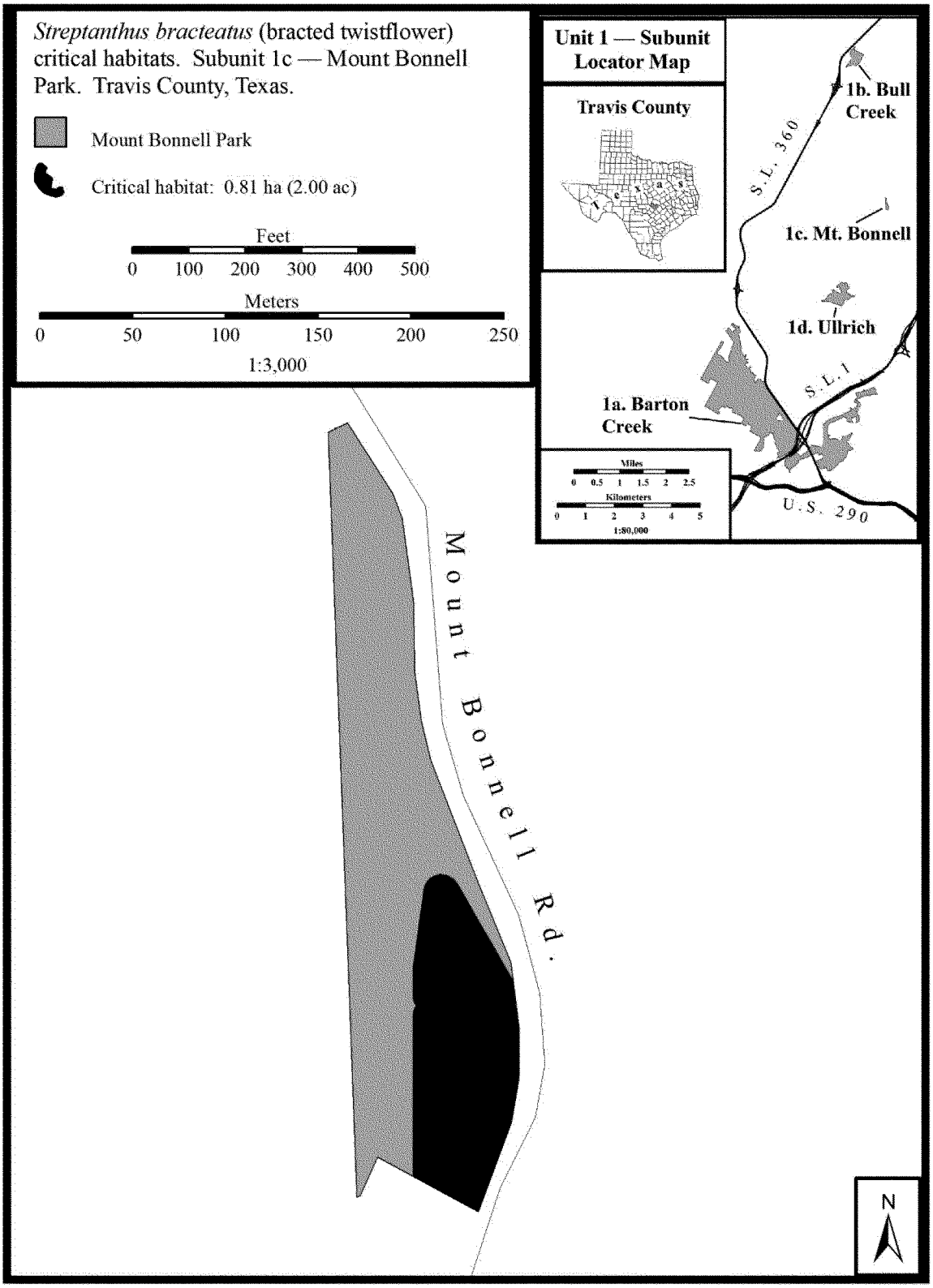


(iii) Subunit 1c: Mount Bonnell Park.

(A) Subunit 1c consists of 2 ac (0.81 ha) in Travis County and is composed of lands owned by the City of Austin Parks and Recreation Department and managed as a unit of the BCP system.

(B) Map of Subunit 1c follows:

Figure 4 to *Streptanthus bracteatus* (bracted twistflower) paragraph (6)(iii)(B)

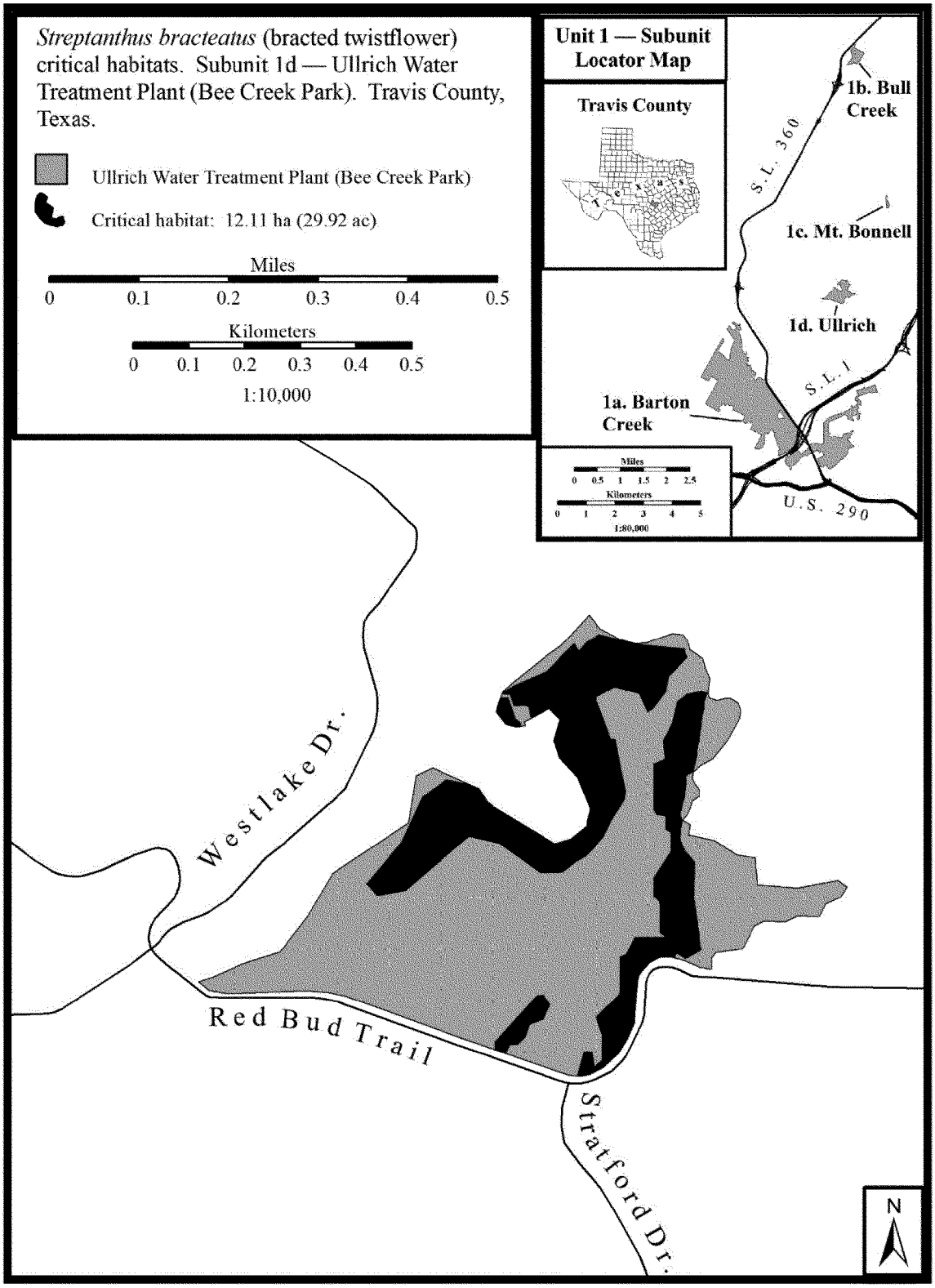


(iv) Subunit 1d: Ullrich Water Treatment Plant/Bee Creek Park.

(A) Subunit 1d consists of 29.92 ac (12.11 ha) in Travis County and is composed of lands owned by the City of Austin Water Utility, a portion of which is managed as a BCP Habitat Management Area.

(B) Map of Subunit 1d follows:

Figure 5 to *Streptanthus bracteatus* (bracted twistflower) paragraph (6)(iv)(B)



(7) Unit 2: Central, Bexar, and Medina Counties, Texas.

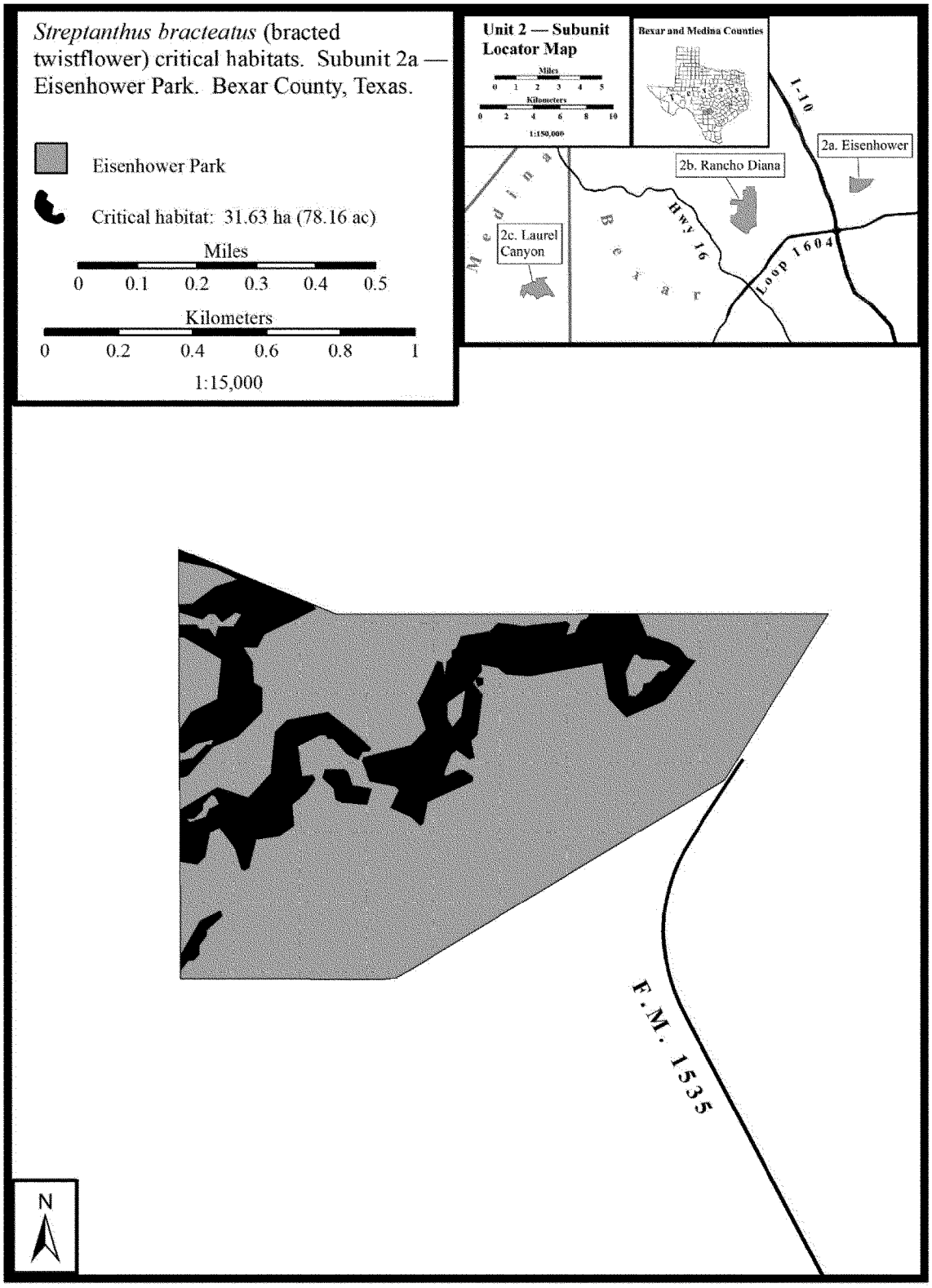
(i) Subunit 2a: Eisenhower Park.

(A) Subunit 2a consists of 78.16 ac (31.63 ha) in Bexar County and is

composed of lands owned by the City of San Antonio and managed by San Antonio Parks and Recreation Department (SAPRD).

(B) Map of Subunit 2a follows:

Figure 6 to *Streptanthus bracteatus* (bracted twistflower) paragraph (7)(i)(B)

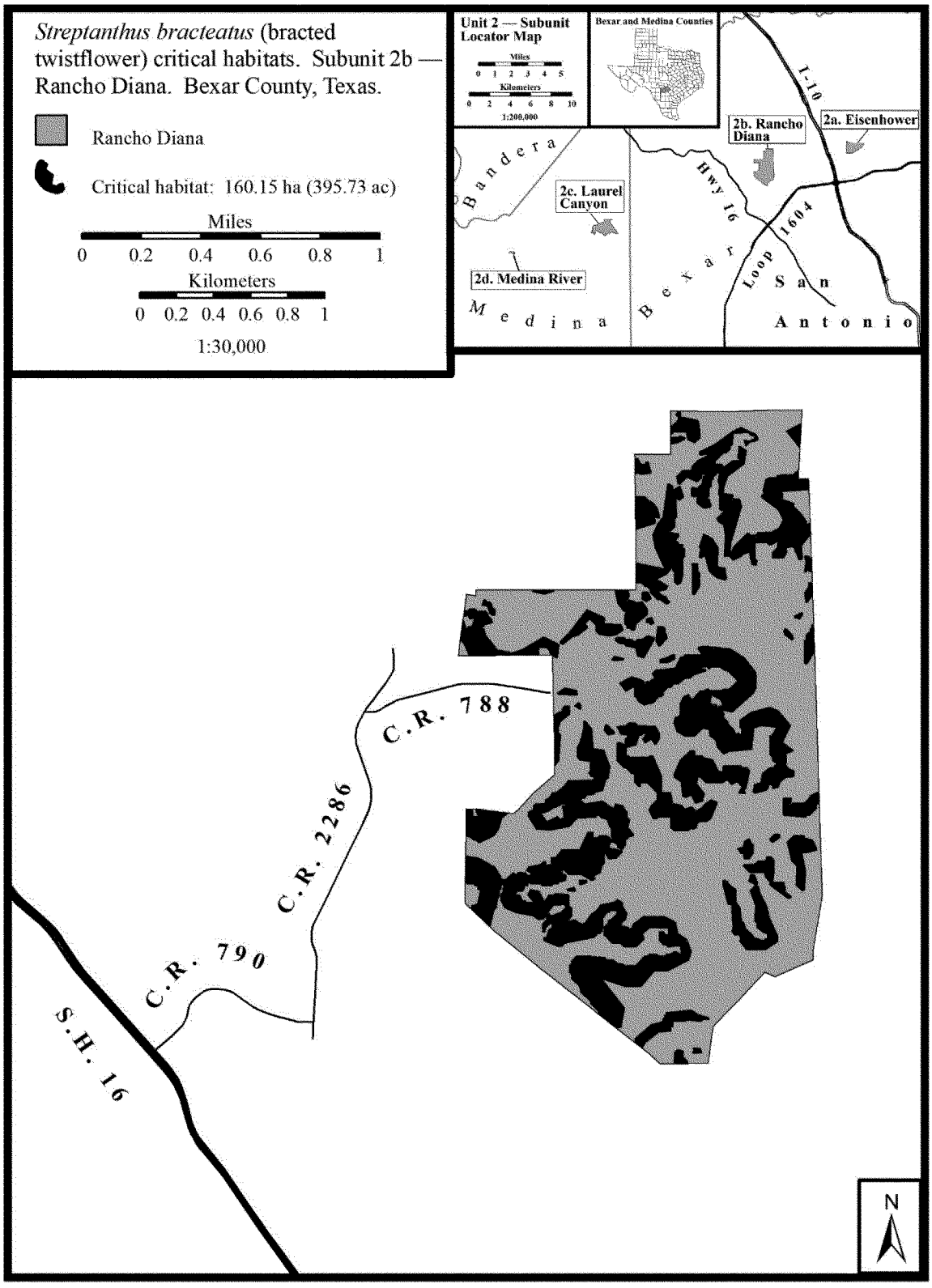


(ii) Subunit 2b: Rancho Diana.

(A) Subunit 2b consists of 395.73 ac (160.15 ha) in Bexar County and is composed of lands owned and managed by the City of San Antonio.

(B) Map of Subunit 2b follows:

Figure 7 to *Streptanthus bracteatus* (bracted twistflower) paragraph (7)(ii)(B)

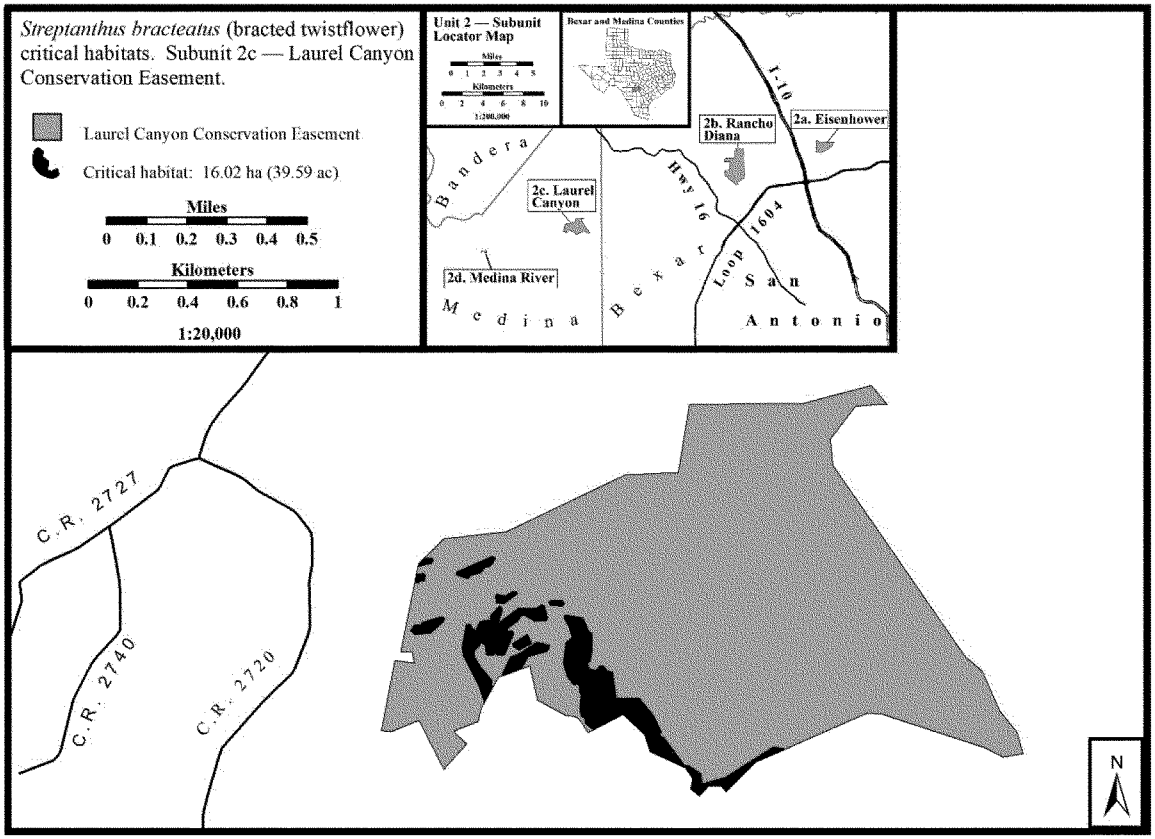


(iii) Subunit 2c: Laurel Canyon Ranch Conservation Easement.

(A) Subunit 2c consists of 39.59 ac (16.02 ha) in Medina County and is composed of private property owned by Laurel C. Canyon Ranch, LP. The City of San Antonio Edwards Aquifer Protection Program holds a conservation easement on 222 ha (549 ac) of Laurel Canyon Ranch.

(B) Map of Subunit 2c follows:

Figure 8 to *Streptanthus bracteatus* (bracted twistflower) paragraph (7)(iii)(B)

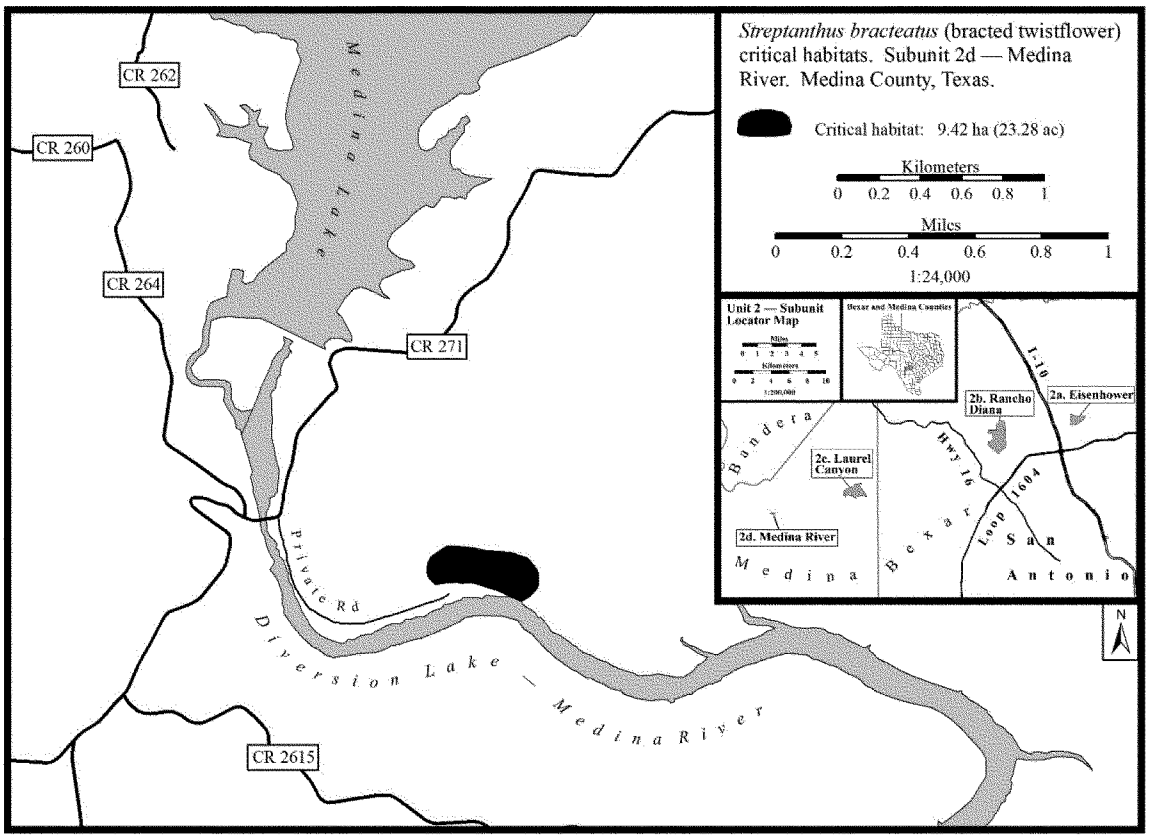


(iv) Subunit 2d: Medina River.

(A) Subunit 2d consists of 23.28 ac (9.42 ha) in Medina County and is composed of private property owned by Medina Ranch Inc.

(B) Map of Subunit 2d follows:

Figure 9 to *Streptanthus bracteatus* (bracted twistflower) paragraph (7)(iv)(B)

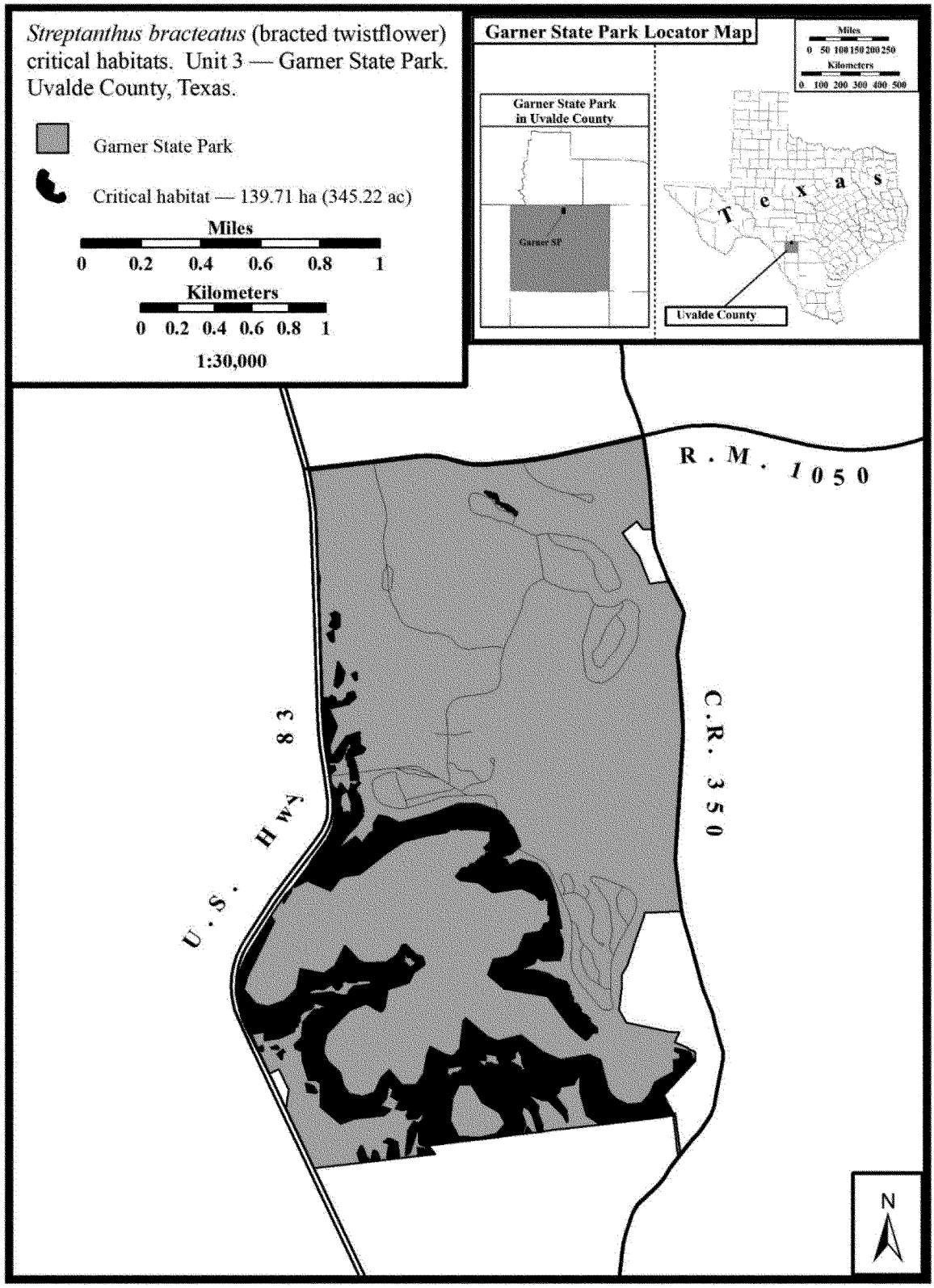


(8) Unit 3: Southwest; Garner State Park, Uvalde County, Texas.

(i) Unit 3 consists of 345.22 ac (139.71 ha) in Uvalde County and is composed of lands within Garner State Park, which is managed by Texas Parks and Wildlife Department.

(ii) Map of Unit 3 follows:

Figure 10 to *Streptanthus bracteatus* (bracted twistflower) paragraph (8)(ii)



* * * * *

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–24343 Filed 11–9–21; 8:45 am]

BILLING CODE 4333–15–C

FEDERAL REGISTER

Vol. 86 Wednesday,
No. 215 November 10, 2021

Part IV

The President

Notice of November 9, 2021—Continuation of the National Emergency With Respect to Iran
Notice of November 9, 2021—Continuation of the National Emergency With Respect to the Threat From Securities Investments That Finance Certain Companies of the People's Republic of China

Federal Register
Vol. 86, No. 215
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Presidential Documents

Title 3—

The President

Notice of November 9, 2021

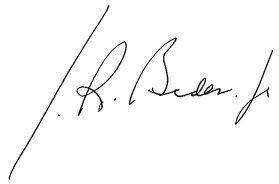
Continuation of the National Emergency With Respect to Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and took related steps to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran.

Our relations with Iran have not yet normalized, and the process of implementing the agreements with Iran, dated January 19, 1981, is ongoing. For this reason, the national emergency declared on November 14, 1979, and the measures adopted on that date to deal with that emergency, must continue in effect beyond November 14, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iran declared in Executive Order 12170.

The emergency declared by Executive Order 12170 is distinct from the emergency declared in Executive Order 12957 on March 15, 1995. This renewal, therefore, is distinct from the emergency renewal of March 5, 2021.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
November 9, 2021.

[FR Doc. 2021–24847
Filed 11–9–21; 2:00 pm]
Billing code 3395–F2–P

Presidential Documents

Notice of November 9, 2021

Continuation of the National Emergency With Respect to the Threat From Securities Investments That Finance Certain Companies of the People's Republic of China

On November 12, 2020, by Executive Order 13959, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the threat from securities investments that finance certain companies of the People's Republic of China (PRC).

The President found that the PRC is increasingly exploiting United States capital to resource and enable the development and modernization of its military, intelligence, and other security apparatuses, which continues to allow the PRC to directly threaten the United States homeland and United States forces overseas. Through the national strategy of Military-Civil Fusion, the PRC increases the size of the country's military-industrial complex by compelling civilian Chinese companies to support its military and intelligence activities. Those companies, though remaining ostensibly private and civilian, directly support the PRC's military, intelligence, and security apparatuses and aid in their development and modernization. At the same time, those companies raise capital by selling securities to United States investors that trade on public exchanges both here and abroad, lobbying United States index providers and funds to include these securities in market offerings, and engaging in other acts to ensure access to United States capital.

The President further found that the PRC's military-industrial complex, by directly supporting the efforts of the PRC's military, intelligence, and other security apparatuses, constituted an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

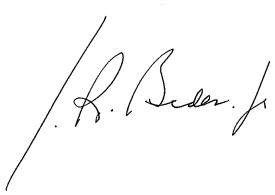
On January 13, 2021, the President signed Executive Order 13974 amending Executive Order 13959.

On June 3, 2021, I signed Executive Order 14032, which expanded the scope of the national emergency declared in Executive Order 13959. I found that additional steps are necessary to address that national emergency, including the threat posed by the military-industrial complex of the PRC and its involvement in military, intelligence, and security research and development programs, and weapons and related equipment production under the PRC's Military-Civil Fusion strategy. In addition, I found that the use of Chinese surveillance technology outside the PRC and the development or use of Chinese surveillance technology to facilitate repression or serious human rights abuse constituted unusual and extraordinary threats to the national security, foreign policy, and economy of the United States, and I expanded the national emergency to address these threats. Executive Order 14032 amended Executive Order 13959 and revoked Executive Order 13974 in its entirety.

The threat from securities investments that finance certain companies of the PRC and certain uses and development of Chinese surveillance technology continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

For this reason, the national emergency declared in Executive Order 13959 of November 12, 2020, expanded in scope by Executive Order 14032 of June 3, 2021, must continue in effect beyond November 12, 2021. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13959 with respect to the threat from securities investments that finance certain companies of the PRC and expanded in Executive Order 14032.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
November 9, 2021.

[FR Doc. 2021–24848
Filed 11–9–21; 2:00 pm]
Billing code 3395–F2–P

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